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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No.

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED FOR REVIEW

WHEN THE SUPREME COURT OF FLORIDA FOUND THAT THE STOP OF RESPONDENTS' BOAT FOR INSPECTIONS PURPOSES WAS VALID AND THAT RESPONDENTS WERE VALIDLY ARRESTED PRIOR TO HOLD OF THE BOAT BEING SEARCHED, DID THAT COURT INCORRECTLY FIND THE SEARCH OF THE HOLD INVALID WHEN IT WAS PROPER AS BEING INCIDENT TO ARREST, AS FALLING UNDER THE "CARROLL EXCEPTION" TO THE WARRANT REQUIREMENT AND AS AN APPROPRIATE INSPECTION FOR SAFETY REASONS.

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OPINIONS BELOW

Respondents' convictions were reversed by Florida's Third District Court of Appeal in *Casal v. State*, 375 So.2d 1077 (Fla. 3rd DCA 1979). The State obtained certiorari review by the Supreme Court of Florida, which approved of the district court's conclusion, although employing different reasoning, in *State v. Casal*, 410 So.2d 152 (Fla.1982). The opinion of the district court on remand is reported as *Casal v. State*, 411 So.2d 1040 (Fla.3rd DCA 1982).

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The opinion of the Supreme Court of Florida was filed on January 14, 1982. Rehearing was denied on March 15, 1982. Mandate was issued on March 15, 1982.

On May 19, 1982, this Court extended the time for the filing of this petition until June 13, 1982, a Sunday, thus making

the petition due on June 14, 1982. Petitioner forwarded to this Court a second motion for extension of time on June 10, 1982. In that motion, Petitioner sought an additional five days for the filing of this petition in light of an automobile accident which injured the mother of the undersigned counsel and which prevented the undersigned from having the petition prepared before June 14, 1982. On June 11, 1982, the undersigned counsel was informed by the Clerk's Office of this Court that only a total of 30 days could be granted in extending the time for filing a petition for a writ of certiorari, so Petitioner's motion could not be considered. The clerk's office also informed the undersigned counsel that a petition for a writ of certiorari can be considered even though filed beyond the date due and suggested that Petitioner file its petition and include therein the

factors set forth in this paragraph. Petitioner assures this Court that the only reason its petition was not filed prior to June 14, 1982, is the unforeseen automobile accident noted above.

This Court's jurisdiction is invoked pursuant to 28 *U.S.C.* §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment, United States Constitution.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The Supreme Court of Florida stated the relevant facts as follows:

> While patrolling the Atlantic side of the Florida Keys at night, Officers Walker and Soli of the Florida Marine Patrol saw a fishing vessel then being operated by the respondents. Although the Marine Patrol had received several complaints from local fishermen that their traps were being raided, the officers initially had no suspicion that the operators of the vessel were engaged in illegal activity. Nevertheless, they pulled alongside the vessel and asked the captain to cut his engines. They then asked to see the boat's registration certificate which is legally required to be on board. *See* §371.051(5), Fla.Stat. (1977). The captain, Omar Garcia, produced a tax receipt and some other documents but could not locate the registration certificate. Because the boats were banging alongside each other, Officer Soli asked permission to board the vessel. The respondents assisted her on board.
>
> Upon boarding Officer Soli accompanied the respondents to the cabin to help look for the registration certificate. She testified that the respondents seemed agitated and apprehensive insofar as they were looking at each other a lot. She then asked to look in their icebox. After being told that would be fine she opened the icebox and saw some rotten food but no ice. This seemed strange to her since the captain had

> earlier said that they were on their way to Cay Sal to go fishing. She reported this finding to Officer Walker who had maneuvered the Marine Patrol vessel a few feet away to keep it from bumping into respondents' vessel. Officer Soli then asked to look in the forward hatch. Captain Garcia asked if she had a search warrant. Overhearing this exchange Officer Walker told Garcia that they did not need a search warrant since they were not conducting a search and that he was under arrest for not having a boat registration certificate on board. Garcia then said there was no need to go further and that the boat was loaded with grass. Officer Walker called respondents over to the side of the boat and after advising them of their *Miranda* rights asked them to confirm what was just said by opening the front hatch for Officer Soli's inspection. When they did so she discovered several bales of Marijuana.

410 So.2d at 153.

Prior to trial, Respondents moved to suppress the marijuana on the basis that the search was illegal since the officers had neither probable cause to stop the vessel nor, having stopped the vessel, probable cause to search it. The trial court denied the motion. Respondents proceeded

to trial and were convicted of violating Florida Statutes (1977) §893.03(1)(c) and §893.13(1)(a). They appealed and Florida's Third District Court of Appeal reversed, finding the stop to be invalid. *Casal v. State*, 375 So.2d 1077 (Fla.3rd DCA 1979). The State obtained review in the Supreme Court of Florida, which disagreed with the district court's conclusion regarding the stop and held it to be valid. That court, however, decided that despite the propriety of the stop, the marijuana should have been suppressed, because the search was unlawful. Accordingly, it approved the district court's reversal of the convictions. *State v. Casal*, 410 So.2d 152 (Fla.1982). Justice Alderman wrote an opinion concurring in part and dissenting in part, in which Justice McDonald joined. This opinion argued that the search was valid as a search incident to arrest and under the "Carroll exception" to the warrant requirement.

The propriety of the search was fully litigated at all levels of the state system, in the trial court, the district court of appeal and the state supreme court.

REASONS FOR GRANTING THE WRIT

A.

SEARCH INCIDENT TO ARREST

This Court in *Chimel v. California*, 395 U.S. 752 (1969), held that an officer may search incident to a lawful arrest the arrested person and the area within that person's immediate control. This rationale is applicable here and justifies the search.

As the Supreme Court of Florida noted, Respondents were under arrest when the officers searched the hold of the boat, finding the marijuana. In dealing with the scope of a search incident to the arrest of persons in automobiles, this Court makes it clear that the search here falls within this doctrine.

In *New York v. Belton*, ___ U.S. ___, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), this Court held that when the occupant of an automobile is subjected to a lawful custodial arrest, the scope of a search incident to arrest includes the entire passenger compartment of the automobile. *See also: United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (upholding actions of authorities which included search of vehicle trunk after arrest of three occupants).

The search here should be viewed in the same manner as the search in *Belton, supra*. The hold of a boat is easily accessible to the boat's occupants and no key is required to reach it. It is quite conceivable, as Justice Alderman noted below, that weapons might have been in the hold or that other persons might have been there. Either situation would have created great danger, particularly in light of the fact that Re-

spondents were on board alone with the female officer. Moreover, the situation here certainly presents a more compelling justification for a search incident to arrest than did *Belton* since in that case the occupants had already been taken from the car.

B.

"CARROLL EXCEPTION"

The search is also valid under the "Carroll exception" to the warrant requirement. This doctrine arises from this Court's decision in *Carroll v. United States*, 267 U.S. 132 (1925), which held that a warrantless search of an automobile stopped by police officers who had probable cause to believe the vehicle contained contraband was not unreasonable within the meaning of the Fourth Amendment. The decision was based on the inherent mobility of an automobile and is of course at least equally applicable to boats.

Indeed, it should logically be considered to be more applicable since a boat can go in any direction, while an automobile is restricted to the roads. Such a search may even probe compartments and containers within a vehicle whose contents are not in plain view. *United States v. Ross*, ___ U.S. ___, 31 Cr.L. 3051 (1982).

In the present case, the Supreme Court of Florida found that probable cause did not exist. This conclusion is inexplicable in light of the fact that, as recognized in the court's opinion, Respondent Garcia told the officers, prior to the search of the hold, that the boat was loaded with marijuana. Given this clear existence of probable cause and the mobility of the boat, the search was justified under the "Carroll exception." The mere fact that the officers may have been able to secure the boat does not render the "Carroll exception" inapplicable. See: *Chambers v. Maroney*, 399 U.S. 42 (1970).

C.

INSPECTION SEARCH

A third ground also exists to validate the search here. Even if the statement by Respondent Garcia is not considered, it must be remembered that Respondents were unable to produce their registration certificate, which they were required by law to have on board, *Florida Statutes* (1977) §371.051(5), and that they had no ice in their icebox despite telling the officers that they were going to Cay Sal to go fishing. These facts alone are certainly not sufficient to establish probable cause in the criminal law sense, but they are, as even the Supreme Court of Florida recognized, "suspicious circumstances", 410 So.2d at 156, and gave reason to believe that there might well be safety violations or other such irregularities. Since the stop in this case was for the purpose of checking

fishing permits, registration certificates and safety equipment, 410 So.2d at 155, these circumstances justified a search to determine whether such improprieties existed. Such a search does not have to be supported by the same degree of probable cause as does a search conducted in the course of a criminal investigation. See *Camara V. Municipal Court*, 387 U.S. 523 (1967) (where considerations of health and safety are involved, the facts that would justify an inference of probable cause to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken, 387 U.S. at 538, quoting from *Frank v. Maryland*, 359 U.S. 360 (1959), Douglas, J., dissenting). See also *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978) (entitlement of the Secretary of Labor to inspect for violations of the Occupational Safety and Health Act of 1970 [OSHA] will not depend on his demonstrating

probable cause to believe that conditions in violation of OSHA exist on the premises; probable cause in the criminal law sense is not required, 436 U.S. at 320).

The Supreme Court of Florida applied the incorrect standard in requiring probable cause in the criminal law sense, "Without consent, the officers were precluded from further searching the vessel unless they had probable cause to believe that a crime was being or was about to be committed." 410 So.2d at 156. The court below therefore misapplied this Court's standards regarding searches of this nature.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that this Court should grant certiorari and quash the decision of the Supreme Court of Florida,

Respectfully submitted,

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SUPREME COURT OF FLORIDA

No. 58,192

STATE OF FLORIDA, Petitioner,

v.

CONSTANTINO CASAL and
OMAR GARCIA, Respondents.

[January 14, 1982]

BOYD, J.

This cause is before the Court on petition for certiorari to review the decision in Casal v. State, 375 So.2d 1077 (Fla. 3d DCA 1979). We have jurisdiction by virtue of conflict with Hill v. State, 238 So.2d 608 (Fla. 1970) and Miranda v. State, 354 So.2d 411 (Fla. 3d DCA), cert. denied, 364 So.2d 888 (Fla. 1978). Art. V, § 3(b) (3), Fla. Const. (1972).

While patrolling the Atlantic side of the Florida Keys at night, Officers Walker and Soli of the Florida Marine Patrol saw a fishing vessel then being

operated by the respondents. Although the Marine Patrol had received several complaints from local fishermen that their traps were being raided, the officers initially had no suspicion that the operators of the vessel were engaged in illegal activity. Nevertheless, they pulled alongside the vessel and asked the captain to cut his engines. They then asked to see the boat's registration certificate which is legally required to be on board. See § 371.051(5), Fla. Stat. (1977). The captain Omar Garcia produced a tax receipt and some other documents but could not locate the registration certificate. Because the boats were banging alongside each other, Officer Soli asked permission to board the vessel. The respondents assisted her on board.

Upon boarding Officer Soli accompanied the respondents to the cabin to

help look for the registration certificate. She testified that the respondents seemed agitated and apprehensive insofar as they were looking at each other a lot. She then asked to look in their icebox. After being told that would be fine she opened the icebox and saw some rotten food but no ice. This seemed strange to her since the captain had earlier said that they were on their way to Cay Sal to go fishing. She reported this finding to Officer Walker who had maneuvered the Marine Patrol vessel a few feet away to keep it from bumping into respondents' vessel. Officer Soli then asked to look in the forward hatch. Captain Garcia asked if she had a search warrant. Overhearing this exchange Officer Walker told Garcia that they did not need a search warrant since they were not conducting a search and that he was under arrest for

not having a boat registration certificate on board. Garcia then said there was no need to go further and that the boat was loaded with grass. Officer Walker called respondents over to the side of the boat and after advising them of their Miranda rights asked them to confirm what was just said by opening the front hatch for Officer Soli's inspection. When they did so she discovered several bales of marijuana.

Respondents were taken into custody and charged with violating sections 893.03 (1) (c) and 893.13(1) (a), Florida Statutes (1977). Before trial they moved to suppress the evidence on the basis that the search was illegal since the officers had neither probable cause to stop the vessel nor, having stopped the vessel, probable cause to search it. The trial court denied the motion, and after trial

respondents were convicted. On appeal the district court reversed on the basis of the United States Supreme Court decision in Delaware v. Prouse, 440 U.S. 648 (1979), which had been handed down in the interim. In that case, after balancing the state's interest in promoting public safety on its roads against the citizens' interest to be free from government intrusion, the Supreme Court held that a police officer's completely random stop of an automobile to check the driver's license and car registration was an unconstitutional seizure under the Fourth Amendment. The district court reasoned that the Marine Patrol's stopping respondents' vessel was likewise unconstitutional since there was "no basis for distinguishing between automobiles and boats in applying the Fourth Amendment's proscription of unreasonable searches and

and seizures." 375 So.2d at 1078. Since we find there is a distinction substantial enough to tip the balance in favor of the state's legitimate interest, we disapprove that portion of the district court's opinion. Since we conclude that there was no probable cause to search the boat, however, we approve the district court's decision that the evidence should have been suppressed.

First we shall consider what are the state's interests. One main interest is promoting maritime safety. All motorboats must contain certain safety equipment and lighting devices. § 371.57, Fla. Stat. (1977). In Prouse, the Supreme Court stated that the state of Delaware had several alternative methods of promoting public highway safety, including annual automobile inspections and frequent enforcement of traffic violations. These

methods are not available to the Florida Marine Patrol. The main concern here that motorboats be safely equipped cannot be furthered by requiring periodic safety inspections. Unlike automobiles, the items of safety equipment required to be on boats, such as life jackets and fire extinguishers, are easily detachable. A periodic inspection could not insure that such equipment would be on board when the boat was being operated. Nor are such safety violations observable and therefore subject to as frequent enforcement as automobile violations.

The state also has a legitimate interest in regulating fishing within the state's waters. Hill v. State, 238 So.2d 608 (Fla. 1970). In Hill this Court held that requiring an applicant for a shrimping permit to give blanket permission to conservation officers to board his vessel

at any time with or without cause did not violate the applicant's right to be free from unreasonable search or seizure under the state and federal constitutions. A distinction was made between boarding and searching or seizing. This Court found that permission to board was for the limited purpose of ascertaining whether the permit was being carried on board and that any further search or inspection could only be conducted if there were probable cause that a law was being violated. See also Tingley v. Brown, 380 So.2d 1289 (Fla. 1980). The decision suggests that boarding a vessel for the limited purpose of checking for a permit does not constitute a search or seizure.

Chapter 370, Florida Statutes (1977), regulates the taking of saltwater fish and the sizes and quantities of fish that may be taken. Its purpose is to conserve

Florida's marine life which is valuable to the economy, Hill v. State, and to protect certain species from extinction. See §§ 370.114 and 370.12, Fla. Stat. (1977). Requiring boats which may be carrying such marine life to stop for inspection of valid permits is akin to requiring trucks capable of carrying agricultural products to stop at agricultural inspection stations. See Gluesenkamp v. State, 391 So.2d 192 (Fla. 1980); Stephenson v. Department of Agriculture and Consumer Services, 342 So.2d 60 (Fla. 1976).

Now we must consider the citizen's interest in freedom from this type of governmental intrusion. A citizen's expectation of privacy is diminished when participating in specific types of regulated activity. See United States v. Biswell, 406 U.S. 311 (1972) (operating

firearms store); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970) (operating liquor store). In Prouse the Supreme Court found that government regulation of automobiles did not reduce a person's expectation of privacy.

> Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one's home, workplace, and leisure activities. Many people spend more hours each day travelling in cars than walking on the streets. Undoubtedly, many find a greater sense of security and privacy in travelling in an automobile than they do in exposing themselves by pedestrian or other modes of travel. Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed.

440 U.S. at 662-63.

The same does not hold true for motorboat travel. It is not a pervasive or necessary mode of transportation for most people. There is not as great a sense of security and privacy when travelling in a boat as when travelling in an automobile.

Thus subjecting boats to random spot checks for fishing permits or registration certificates does not seriously circumscribe the Fourth Amendment.

Finally, the Supreme Court in Prouse explicitly stated that its holding did not preclude the state of Delaware from developing a system of spot checks. The Court went so far as to suggest the possibility of setting up roadblocks where all traffic is stopped. 440 U.S. at 663. Cf. United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (checkpoint stops and questioning may be made in absence of any individualized suspicion).

We note that this less intrusive alternative is not available to the marine patrol. Boat travel is not limited by fixed roadways. Unlike an automobile, a boat at sea can travel in any direction. Even in harbors where there are channels

which boats must follow, it would be impossible to establish a checkpoint on the water since boats cannot come to a complete stop and line up behind each other on the water as cars can on roads.

In sum we find that the state's interest in random stopping and brief detention of motorboats for the limited purpose of checking fishing permits, registration certificates and safety equipment outweighs a person's interest in being completely free from such limited intrusion. In light of the absence of less restrictive alternatives which would accomplish the state's goals, spot checks of motorboats are not unreasonable under the Fourth Amendment. The district court erred in holding that State marine officers must have probable cause to stop a vessel for the limited purposes discussed above.

We next consider an issue the district

court did not need to reach. That is the question whether the marine patrol officers, having lawfully stopped respondents' vessel, had probable cause to search it. As we have held earlier, after the initial stopping and boarding a vessel the marine patrol must have probable cause before conducting any further search or inspection. Tingley v. Brown; Hill v. State. With respect to safety inspections the legislature has decided that not even the initial boarding may be conducted without consent or probable cause. § 371.58, Fla. Stat. (1977).[1]

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[1] 371.58 Safety inspections; qualified.--No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occured or is occurring.

In this case consent was freely given to board the vessel and to look in the ice-box.

However, respondents did not consent to any further search, as was clearly indicated when they asked Officer Soli if she had a search warrant. Villari v. State, 372 So.2d 522 (Fla. 1st DCA 1979). Respondents' subsequently opening the forward hatch for Officer Soli did not constitute consent since they were told that a search warrant was not needed. See Taylor v. State, 355 So.2d 180 (Fla. 3d DCA), cert. denied, 361 So.2d 835 (Fla. 1978).

Without consent, the officers were precluded from further searching the vessel unless they had probable cause to believe that a crime was being or was about to be committed. Tingley v. Brown. Probable cause cannot be based on mere

suspicion. Bailey v. State, 319 So.2d 22 (Fla. 1975). There must be facts showing a probability of criminal activity. State v. Smith, 233 So.2d 396 (Fla. 1970). In this case the facts were insufficient to show that respondents were probably committing or about to commit a crime. That respondents could not produce a registration certificate and that, although they said they were going to the Bahamas, their icebox did not contain ice may have been suspicious circumstances but did not constitute probable cause. Since the officers lacked probable cause, their search of the vessel was unreasonable and the evidence they obtained should have been suppressed.

We disapprove the district court's decision insofar as it held that the initial stop was unreasonable and required probable cause. However, since we hold

that the subsequent search was unreasonable because it was not based on probable cause, we approve the district court's reversal of the conviction. In accordance with the mandate of the district court of appeal, this cause is remanded to the circuit court with directions to discharge the defendants.

It is so ordered.

SUNDBERG, C.J., ADKINS and OVERTON, JJ., Concur
ALDERMAN, J., Concurs in part and dissents in part with an opinion, in which McDONALD, J., Concurs

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

ALDERMAN, J., concurring in part, dissenting in part.

I agree with the majority's holding that the stopping of the motorboat was not unreasonable under the fourth amendment. The State's interest in the brief stopping for the purpose of checking permits, registration certificates, and safety equipment outweighs defendants' interest in being free from this limited intrusion. The district court was therefore in error in holding that the state marine officers must have probable cause to stop a vessel for these limited purposes.

Unlike the majority, however, I would also hold that the search of the front hold of the boat was not unreasonable under the fourth amendment. Two distinct and well-established exceptions to the warrant requirement, the "Carroll" exception and the search-incident-to-arrest exception, apply here.

In Carroll v. United States, 267 U.S. 132 (1925), the Supreme Court recognized that the warrantless search of a motorboat or ship based upon probable cause may be a reasonable search under the fourth amendment because of the exigent circumstances arising from the movability of the vessel. In that case, the Supreme Court distinguished between search of a fixed structure in respect of which a warrant may be obtained and search of a ship, motorboat, wagon, or automobile for contraband "where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." 267 U.S. at 153. Futhermore, the fact that the officers may be able to secure a vessel does not derogate their authority to search it under the Carroll exception. Chambers v. Maroney, 399 U.S. 42 (1970).

In the present case, I believe that probable cause and exigency exist and that the Carroll exception is applicable. Captain Garcia, shortly after having been arrested for failure to have a registration certificate on board, without any prompting by anyone or without any questions being asked, told the officers that the boat was loaded with marijuana. At that time the officers clearly had probable cause to believe that the defendants' boat was carrying marijuana. The boat itself was fully mobile, and the question of whether it could have been secured is irrelevant. Chambers v. Maroney.

Completely independent of the Carroll exception, I believe the search of the hold was within the constitutionally permissible scope of the search-incident-to-arrest exception. In Chimel v. California, 395 U.S. 752 (1969), the Supreme Court of

the United States held that where there has been a lawful custodial arrest, the officers are justified in making a contemporaneous warrantless search of the arrested person in order to remove any weapons that the arrestee may seek to use in order to effect his escape or resist arrest and in order to seize any evidence on the arrestee's person to prevent its concealment or destruction. The court also held proper a contemporaneous search of the area immediately surrounding the arrestee for the same purposes. These searches may be made whether or not there is probable cause to believe that the person arrested may have a weapon or is about to destroy the evidence since the potential dangers lurking in all custodial arrests make warrantless searches of items within the "immediate control" area reasonable. The arresting officer is not required to

calculate the probability that weapons or destructable evidence may be involved. United States v. Chadwick, 433 U.S. 1 (1977); United States v. Robinson, 414 U.S. 218 (1973). The fact of lawful arrest, alone, authorizes the warrantless search. Michigan v. DeFellippo, 443 U.S. 31 (1979).

Acknowledging the difficulty courts have encountered in respect to the proper scope of what is meant by the area within the immediate controal of an arrestee, particularly in automobile cases, the Supreme Court of the United States in New York v. Belton, 101 S.Ct. 917 (1981), held that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, incident to the arrest, contemporaneously search the passenger compartment of that automobile. This includes, explained the court, a search of

any containers found within the passenger compartment whether the container is opened or closed. In Belton, the occupants of the car had been ordered to get out of the car and had been placed under arrest prior to the officer's searching of the passenger compartment.

In the present case, there is no question that the search was conducted immediately upon arrest of the defendants, and the hold of the boat was easily accessible to the defendants. It is not inconceivable that the defendants may have had weapons hidden in the hold or that armed accomplices could have been hiding there, merely waiting an opportunity to surprise the officers and to thwart the arrest of defendants. Likewise, it is not inconceivable that defendants could have quickly reached the hold and attempted to destroy the evidence by throwing it overboard.

Accordingly, I would hold that the stop and search and seizure were constitutional, and therefore I would quash the decision of the district court.

McDONALD, J., Concurs

A Petition for Writ of Certiorari to the District Court of Appeal, Third District - Case No. 78-2129

Jim Smith, Attorney General and Anthony C. Musto, Assistant Attorney General, Miami, Florida,

for Petitioner

Arthur F. McCormick, South Miami, Florida,

for Respondents

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF
APPEAL OF FLORIDA, THIRD
DISTRICT

JULY TERM, A.D. 1979

CONSTANTINO CASAL and OMAR
GARCIA, Appellants,

vs. CASE NO. 78-2129

THE STATE OF FLORIDA,
Appellee.

Opinion filed August 14, 1979.
An Appeal from the Circuit Court
for Monroe County, Bill G. Chappell, Judge.
Arthur F. McCormick, for appellants.
Jim Smith, Attorney General and
Susan Minor, Assistant Attorney General,
for appellee.

Before Hendry, Kehoe and Schwartz, JJ.

SCHWARTZ, Judge.

The defendants appeal their convictions for possession of marijuana. The cannabis was found aboard a vessel, occupied by the defendants, which had been stopped by Florida Marine Patrol officers while it was under way in the Atlantic off

Monroe County. The officers acknowledged that they had no suspicion, "founded" or otherwise,[1] that those aboard the boat were engaged in any unlawful activity; the stated basis of the stop and subsequent boarding of the vessel was instead simply to make a check of the vessel's registration papers. Both when the incident occurred and when the case, including the defendants' motion to suppress the marijuana, was heard below, the prevailing law was that such a stop was constitutionally permissible. See Hill v. State, 238 So.2d 608 (Fla. 1970). Indeed, this court specifically so held in Miranda v. State, 354 So.2d 411 (Fla. 3d DCA 1978), cert. denied, 364 So.2d 888 (Fla. 1978), which applied the cases permitting "law enforce-

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[1] See, e.g., State v. Stevens, 354 So.2d 1244 (Fla. 4th DCA 1978)

ment officers to stop an automobile for the purpose of making a driver's license or car registration check." 354 So.2d at 413-414.

During the pendency of this appeal, however, the Supreme Court of the United States definitively ruled to the contrary. In Delaware v. Prouse, ____U.S.____, 59 L.Ed.2d 660, 673, 99 S.Ct. 1392 (1979), it was held:

> [E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

As the Hill and Miranda cases themselves demonstrate, there is no basis for distin-

guishing between automobiles and boats in applying the Fourth Amendment's proscription of unreasonable searches and seizures. Since this is true, and since none of the exceptions stated in the Prouse decision are applicable here,[2] we conclude, as did the court in Keenan v. State, ____So.2d____(Fla. 1st DCA 1979) (Case no. LL-156, opinion filed, July 12, 1979), that Prouse requires the conclusions that the stop was improper, and that the motion

---

[2]Compare Taylor v. State, 355 So.2d 180 (Fla. 3d DCA 1978), cert. denied, 361 So.2d 834 (Fla. 1978), where an expired commercial registration certificate was visible to the Marine Patrol officer who "stopped" the boat.

to suppress the contraband which was seized as a result of the stop should therefore have been granted.[3]

---

[3]This result is not contrary to Michigan v. DeFillippo, 47 U.S.L.W. 4805 (June 25, 1979) which upheld the seizure of contraband incident to an arrest for the violation of an ordinance declared unconstitutional only afterwards. Unlike Hill v. State, supra, there seems to be no Florida statute, as opposed to existing judicial interpretations of the effect of the Fourth Amendment, which purports to authorize the unconstitutional practice of stopping a vessel merely to make a random check of its registration certificate. Compare the provision involved in Hill, Section 370.021(5), Fla.Stat. (1967) (permitting stop to ascertain whether shrimping permit was on board) with Section 371.051(5), Fla. Stat. (1975) (requiring that registration certificate be available for inspection but giving no authority to stop). Even if there were such a statute, it would clearly be invalidated by Prouse. The DeFillippo opinion distinguishes such a situation from the DeFillippo case itself, stating at 47 U.S.L.W. 4807-4808:

> We have held that the exclusionary rule required suppression of evidence obtained in searches carried out pursuant to statutes, not previously declared

(Footnote 3 cont'd)

unconstitutional, which purported to authorize the searches in question without probable cause and without a valid warrant. See, e.g., Torres v. Puerto Rico, ___U.S.___(1979); Almeida-Sanches v. United States, 413 U.S. 266 (1973); Sibron v. New York, 392 U.S. 40 (1968); Berger v. New York, 388 U.S. 41 (1967). Our holding today is not inconsistent with these decisions; the statutes involved in those cases bore a different relationship to the challenged searches than did the Detroit ordinance to respondent's arrest and search.

Those decisions involved statutes which, by their own terms, authorized searches under circumstances which did not satisfy the traditional warrant and probable cause requirements of the Fourth Amendment.

* * *

In contrast, the ordinance here declared it a misdemeanor for one stopped for 'investigation' to 'refuse to identify himself'; it did not directly authorize the arrest or search. Once respondent refused to identify himself as the presumptively valid ordinance required,

(Footnote 3 cont'd)

> the officer had probable cause to believe respondent was committing an offense in his presence and Michigan's general arrest statute ... authorized the arrest of respondent, independent of the ordinance. The search which followed was valid because it was incidental to the arrest. The ordinance is relevant to the validity of that arrest and search only as it pertains to the 'facts and circumstances' we hold constituted probable cause for arrest.

The judgments under review are reversed and the cause remanded with directions to discharge the defendants.

Reversed and remanded.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

JANUARY TERM, A.D. 1982

CONSTANTINO CASAL and
OMAR GARCIA,
Appellants,

vs. CASE NO. 78-2129

THE STATE OF FLORIDA,
Appellee.

Opinion filed April 7, 1982.
An Appeal from the Circuit Court for Monroe County, Bill G. Chappell, Judge.
Arthur F. McCormick, for appellants.
Jim Smith, Attorney General and Anthony Musto, Assistant Attorney General, for appellee.

Before HUBBART, C.J., and HENDRY and SCHWARTZ, JJ.

ORDER ON MANDATE

PER CURIAM.

WHEREAS, the judgement of this court was entered on August 14, 1979 (375 So.2d 1077), reversing the final judgments and sentence of the Circuit Court of Dade County, Florida, in the above styled cause; and

WHEREAS, on review of this court's

judgment, the Supreme Court of Florida, by its opinion and judgment dated January 14, 1982, now lodged in this court, disapproved in part this court's judgment;

NOW, THEREFORE, it is ordered that the mandate of this court heretofore issued in this cause on November 27, 1979, is withdrawn, the opinion of this court filed August 14, 1979, is amended in accordance with the said opinion and judgment of the Supreme Court of Florida. The judgments and sentence of the trial court are reversed and the cause remanded with directions to discharge the defendants. Costs allowed shall be taxed in the Circuit Court. Fla.R.App.P. 9.400(a)

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT IN AND FOR MONROE COUNTY, FLORIDA)

MANDATE

SUPREME COURT OF FLORIDA

To the Honorable, the Judges of the District Court of Appeal, Third District,

WHEREAS, in that certain cause filed in this Court styled: STATE OF FLORIDA v. CONSTANTINO CASAL and OMAR GARCIA

Case No. 58,192

Your Case No. 78-2129

The attached opinion was rendered on January 14, 1982, YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

WITNESS the Honorable Alan C. Sundberg, Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 15th day of March, 1982.

s/
Clerk of the Supreme Court of Florida

SUPREME COURT OF FLORIDA

MONDAY, MARCH 15, 1982

STATE OF FLORIDA,	*	
	*	
Petitioner,	*	
	*	CASE NO. 58,192
v.	*	
	*	District Court of
CONSTANTINO CASAL and	*	Appeal, 3d District
OMAR GARCIA,	*	78-2129
	*	
Respondents.	*	

* * * * * * * * * * * * *

Upon consideration of the Motion for Rehearing filed in the above cause by the attorney for Petitioner, and response thereto,

IT IS ORDERED that said Motion be and the same is hereby denied.

SUNDBERT, C. J., ADKINS, BOYD and OVERTON, JJ., concur

ALDERMAN and McDONALD, JJ., dissent

TC

cc: Hon. Louis J. Spallone, Clerk
Hon. Bill G. Chappell, Judge
A True Copy Hon. Ralph W. White, Clerk

TEST: Arthur F. McCormick, Esq.
Anthony C. Musto, Esq.

Sid J. White
Clerk, Supreme Court

Office - Supreme Court, U.S.
FILED
DEC 15 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-2318

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

JOINT APPENDIX

JIM SMITH
Attorney General

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Assistant Attorney General
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COUNSEL FOR PETITIONER

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IN THE CIRCUIT COURT OF THE
16th JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN
AND FOR MONROE COUNTY

- - - - - - - - - - - - - - -

STATE OF FLORIDA

-vs- CASE NO. 77-853-

CONSTANTINO CASAL CF-A-B-31

OMAR GARCIA

Defendant

- - - - - - - - - - - - - - -

MOTION TO SUPPRESS EVIDENCE

COMES NOW Defendant by and through his undersigned attorney, pursuant to Rule 1.190(h)(1), Florida Criminal Procedure Rules, and respectfully moves this Court to suppress as evidence in this cause all tangible items of property and other evidence seized by the police from the Defendant, his automo-

bile, or his premises.

As grounds therefore, the Defendant would show to the Court that the above-mentioned evidence was obtained by the police as a result of an unreasonable search and seizure in violation of the Defendant's rights guaranteed by the Fourth and Fourteenth Amendment [sic] to the United States Constitution in that:

1. The property was illegally seized without a warrant.

2. That the arrest was illegal and in violation of the Defendant's Constitutional rights.

3. That the result of the illegal arrest should be suppressed.

4. The subject property and evidence was illegally seized in violation of the provision of Chapter 933, Florida Statutes.

5. That the search was not incidental to lawful arrest.

6. That it was not a consent search.

7. That it was not an inventory search.

8. That the officers had no probable cause to search the vehicle.

9. Evidence to be suppressed is in excess of One Hundred pounds of marijuana.

10. Factual Situation:

The Defendant was lawfully operating a vessel in Monroe County, Florida. The Defendant was stopped on mere suspicion. There was no probable cause for arrest as for a search and seizure of the Defendant's property.

The Officers commenced to search the vessell [sic] without consent and without proper authority.

/s/
MANUEL W. JAMES
Attorney for Defendants
P. O. Box 1057
Key West, Florida 33040

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion was delivered to the Office of the State Attorney, Monroe County Courthouse Annex, Key West, Florida, this 3rd day of April, 1978.

/s/
MANUEL W. JAMES

IN THE CIRCUIT COURT OF THE
16th JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN
AND FOR MONROE COUNTY

STATE OF FLORIDA

-vs- CASE NO.

CONSTANTIO [sic] CASAL 77-853-CF

OMAR GARCIA

Defendant

MOTION TO SUPPRESS CONFESSION

COMES NOW the Defendant, CONSTANTIO [sic] CASAL and OMAR GARCIA, by and through his undersigned attorney, pursuant to Rule 1.190(i), Florida Criminal Procedure Rules, respectfully moves this Court to Suppress as evidence at the trial in the above-styled cause all written and oral statements made by the Defendant to the police or other

agents of the State of Florida.

As grounds for this Motion, Defendant states:

1. The written and oral statements were obtained from the Defendant in violation of the Defendant's privilege against self-incrimination and the Defendant's right to counsel guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution as interpreted by the United States Supreme Court in MIRANDA v. ARIZONA, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d 694 (1966).

2. That the Defendant allegedly made certain incriminating statements to the Police or State agents, after his arrest on the date charged in the Information, without being informed of his rights of silence and to counsel.

3. The written and oral statements

obtained from the Defendant were not freely and voluntarily given, in violation of the Defendant's rights guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and by Article I, Section 9 of the Florida Constitution (1968).

4. The written and oral statements were obtained from the Defendant in violation of the Defendant's right to be free of unreasonable searches and seizure guaranteed by the Fourth and Fourteenth Amendments of the United States Constituion [sic]. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L. Ed. 2d 441 (3rd DCA Fla. 1967) [sic].

5. The written and oral statements were obtained from the Defendant in violation of Fla. Stat. Sec. 901.06 and Sec. 901.23 Oliver v. State, 250 So. 2d

888 (Fla.).

6. The written and oral statements obtained from the Defendant are not supported by an independent prima facie proof of the corpus delecti of the crime for which the Defendant is charged.

Respectfully submitted,

/s/
MANUEL W. JAMES
Attorney for Defendant
P. O. Box 1057
Key West, Florida 33040

I HEREBY CERTIFY that a true and correct copy of the above Motion to Suppress Confession was delivered to the State Attorney Office, Monroe County Courthouse Annex, Key West, Florida, this 20th day of September, 1978.

/s/
MANUEL W. JAMES

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT (CRIMINAL DIVISION) IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA

vs. Case No. 77-853

CONSTANTINO CASAL
OMAR GARCIA

HEARING ON MOTION TO SUPPRESS EVIDENCE AND CONFESSION

This cause on to be heard before the Honorable Bill G. Chappell, Judge of the Circuit Court, Criminal Division, on September 20, 1978.

APPEARANCES:

RICHARD FOWLER, Assistant State Attorney, on behalf of the State.

MANUEL W. JAMES, Attorney-at-law, on behalf of the Defendant.

THEREUPON:

THE COURT: Constantino Casal and Omar

Garcia, Case Number 77-853, is the State ready?

MR. FOWLER: Yes, sir.

THE COURT: Is Defense ready?

MR. JAMES: Yes, sir, subject to a motion, we have some outstanding motions which I suggest should be heard pre-trial, I've got a motion to suppress. It's been filed for some time.

THE COURT: The Court finds the motion legally sufficient. Is the State ready to proceed?

MR. FOWLER: Your Honor, I contacted both of my officers and they are both on their way, th

THE COURT: When are they supposed to get here?

MR. FOWLER: They should be here within 15 minutes.

Thereupon, at 11:25 A.M.

THE COURT: Are we going to hear both

of them together, is that what you said, we've got two motions here.

MR. JAMES: Yes, sir, I think all the testimony can be taken at one time.

THE COURT: The Defense wants to present evidence supporting your position?

MR. JAMES: No, sir, it's a warrantless search, I'd like a stipulation from the State that the search is not based on a search warrant, it's a warrantless search.

MR. FOWLER: There was no warrant.

MR. JAMES: Let the record reflect that stipulation between the Defense and State, there is no search warrant involved in this case. I have no evidence to present.

THE COURT: That is your basis. Is the State ready to proceed.

MR. FOWLER: Yes, sir, the State calls Mark Walker.

THEREUPON, MARK WALKER, was called as a witness and after being duly sworn, testified as follows:

DIRECT-EXAMINATION

BY MR. FOWLER:

Q. State your name and occupation, please?

A. Mark Walker, I'm employed with the Florida Marine Patrol.

Q. Were you employed by them on the 18th of September, of last year?

A. Yes, sir, I was.

Q. Did you have occasion on the early morning hours of that date to be on marine patrol?

A Yes, sir, I was.

Q. What area were you patrolling?

A. I was patrolling from Key West on the ocean side to Munson Island.

Q. Did you have occasion to approach a

boat in the early morning hours of the 18th?

A. Yes, sir, the evening of the 17th, I was on patrol, it was the morning of the 18th that I encountered the boat.

Q. Will you describe the boat, please?

A. Yes, sir, it is approximately a 45 foot, 45 or 49 foot commercial type of vessel, it has a wheel house on the back, as we approached and put the light on it, it had a large number of wired traps that are commonly used for fish traps, it had a puller on the side of the boat that is used to pull different types of traps.

Q. Officer Walker, were you one the lookout for anything particular in that area that evening?

A. Yes, sir, we worked in this area at the request of the supervisors because we had had a large number of complaints, several complaints of traps being robbed,

crawfish traps being robbed up in that area, the fisherman seemed to think that it might have been occurring during the night-time hours because they are out there pretty much during the day time pulling their traps.

Q. What did you do upon approaching this boat?

A. As we approached from the stern of the boat, I come out to the starboard side of it and about 50 feet from the stern of it we turned our spotlight on, Officer with me, Jenna, I asked her to put the spot-light on and we proceeded up besides the boat, a gentleman stopped out of the wheel-house, I advised him I was Florida Marine Patrol and requested that he take his engines out of gear or stop his boat, that I would like to check his papers.

Q. And did he comply with that request?

A. Yes, sir, he did, he stopped the boat, I swung, went up around the bow of the boat and brought my boat up along side of his, towards the stern part of his boat.

Q. What happened next?

A. Two gentlemen come out of the wheelhouse, I identified myself as Mark Walker, again with the Marine Patrol and I told them that I would like to check their registration papers for their boat?

Q. And did they produce the registration papers?

A. At first he handed me a white piece of paper with the tax receipt, taxes paid on the boat, I assumed was paid on the boat, I told him that that wasn't what I wanted to see, that I needed a small square piece of paper which was a Florida Registration Certificate, he returned and handed me the documentation papers for the vessel and I asked him if he was a captain,

I don't remember whether he replied whether he was the captain or not, I asked him if he was the signed on captain. The documentation papers reflected a man's name but it wasn't Mr. Garcia's name, he said that the boat was in the owner's name, I asked him again for the registration certificate and he stated that the owner must not have put it on the boat.

Q. Okay, then what happened?

A. Due to the weather situation out there that night, I asked if it would be all right, asked permission for to come aboard the boat at which time Officer Soli stepped up into the seat of the patrol boat and Mr. Garcia and his mate assisted her and helped her aboard the boat. After she had boarded the boat, I moved my boat a few feet away from the boat so that the two boats wouldn't be together.

Q. Okay, then what happened?

A. I laid off to the side there, Officer Soli went into the wheelhouse, she appeared out on the back deck, Mr. Garcia was standing on the doorway to the back of the boat there with her, she opened up the compartment on the back, it's a wooden box that contained the groceries and she told me that there was hardly any ice and very little groceries in there and what was in there appeared to be rotten.

Q. Okay, and then what happened?

A. She walked up, back up into the cabin and walked out on the other side of the boat and started up towards the front of the boat. I don't recall exactly whether she asked to check the ice although I'm sure she asked to check the ice hole, Mr. Garcia asked if we had a search warrant and I advised him no that we didn't need one because we weren't searching the vessel

and that he was under arrest for failure to have a registration on the boat.

Q. Then what if anything did any of the individuals on board say?

A. Mr. Garcia stated, 'well there is no need to go any further, the boat is loaded with grass'.

Q. Was that in response to any questions by you?

A. No, sir.

Q. Any prompting by you for a response?

A. No, sir, it wasn't.

Q. Then what happened?

A. I immediately maneuvered my boat back alongside of his boat, I asked Mr. Garcia and the other gentleman if they would come over to the side of the boat where I advised them of their rights.

Q. How did you advise them of their rights?

A. Of the Miranda card that I have in my billfold.

Q. You have that card with you today?

A. Yes, sir, I do.

Q. Will you indicate to the Court how you advised these individuals of their rights?

A. I maneuvered by boat up to the side, we stopped alongside of the boat, I had my spotlight laying on the console which is like a desk by me, the mate, I can't remember how you pronounce his name, Casal, was holding on to my windshield and I held my billfold up with my Miranda card in it and I read the Miranda Rights.

Q. Will you read them now, please?

A. You have the right to remain silent; any thing you say can and will be used against you in a court of law; you have the right to talk to a lawyer and have him present while you are being questioned; if

you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish; you can decide at any time to exercise these rights and not answer any questions or make any statements. Do you gentlemen understand your rights. Mr. Garcia acknowledged that he understood his rights.

Q. What statements if any did either of the two defendants make subsequent to that?

A. I then asked Mr. Garcia, I said 'Mr. Garcia, what do you have on the boat', he stated, 'marijuana', I asked him, 'how many bales', he replied he didn't know, I says, 'do you have any idea how many pounds: he replied he didn't have any idea, and I asked him if he would assist Officer Soli in opening the forward hatch to verify what he had told me, Mr. Garcia and the mate went forward, they moved some

fishtraps out of the way, and lifted the hatch cover, when they did this, a strong odor that I had smelled on previous occasions emitted from the compartment, it smelled like that of marijuana.

Q. Office Walker, prior to this time, prior to the time of the arrest did either of the individuals indicate to you where they were coming from or where they were fishing?

A. Yes, sir, when I was checking the papers, I didn't recognize the boat from being out of Key West and I asked the captain where he was fishing out of, what fishhouse, he said he has fished out of Miami and that he had moved down to Woodsy Niles, he had fished out of there one day and that he was on his way to Cay Sal to go fishing.

MR. FOWLER: I have no further questions of Mr. Walker.

THEREUPON: CROSS-EXAMINATION

BY MR. JAMES:

Q. Did Mr. Casal make any statement to you?

A. No, sir.

Q. Did Mr. Casal speak English?

A. Not to my knowledge he never spoke any English in my presence.

Q. Did you inform him of his rights in Spanish, are you fluent in Spanish?

A. No, sir, I'm not.

Q. Is Jenra Soli fluent in Spanish?

A. Not to my knowledge.

Q. Would you describe the weather conditions for me that night?

A. The weather was clear, probably had a 10 or 15 knot wind out of the east, easterly direction.

Q. What was it necessary for Officer Soli to go aboard the boat, then?

A. The two boats were banging up

against each other and it's kind of hard for a man hanging down over the side of the boat to give you the papers or try to explain to him what papers that you were wanting for the boat.

Q. What was the purpose of Officer Soli going aboard the vessel?

A. To check the registration for the boat.

Q. Hadn't Mr. Garcia already told you that there was no registration, hadn't he already furnished you with the documentation papers and receipt that the taxes had been paid on said vessel?

A. Yes, sir.

Q. And hadn't he told you that the owner apparently did not put the registration on said vessel?

A. He said that the owner may not have put the registration papers aboard the boat.

Q. You already knew that when you sent Officer Soli aboard the boat, didn't you?

A. I didn't send her aboard.

Q. How did she get aboard, weren't you senior in command on the marine patrol velles?

A. Yes, sir.

Q. Did she go aboard on her own without supervision or direction from you?

A. She went aboard the boat to check the papers, to further check for the papers.

Q. The papers that you knew didn't exist.

A. I didn't know they didn't exist.

Q. Was she checking for the papers when she went back to this back compartment and opened up and looked in the groceries was she looking for the registration papers then?

A. No, sir.

Q. Was she looking for registration papers when she went and looked in the ice hole in the back where she looked, where you say there was very little ice, was she looking for registration papers then?

A. No, sir.

Q. Hadn't she gone aboard the vessel to search the vessel?

A. No, sir.

Q. So then why did she look on those holes? If she didn't open those holes to look for the papers and she wasn't searching, why was she looking at them?

MR. FOWLER: Your Honor, I don't feel that this witness is qualified to testify as to why Officer Soli did whatever Officer Soli did, she will be called as a witness to indicate why she did whatever she did.

THE COURT: I think the questions are directed as to whether this witness made any direction or ordered her or whatever.

MR. JAMES: Yes, sir.

THE COURT: I'll let you go ahead on that basis.

Q. Okay, did you direct Officer Soli to look for the registration papers in the grocery compartment?

A. No, sir, I asked Officer....

Q. Just answer my question, yes or no. Did you direct Officer Soli to look for the registration papers in the back ice hole?

A. No, sir.

Q. Did you see her look in those ice holes and the grocery compartment?

A. Yes, sir.

Q. Now, prior to Officer Soli going on that boat, Mr. Garcia had already told you that there was no registration paper on the boat, right?

A. He advised he didn't know whether

the owner put the papers on the boat or not.

Q. He had been unable to produce any registration papers, right?

A. Yes, sir.

Q. Did you place him under arrest at that time?

A. No, sir, I didn't.

Q. Didn't you place him under arrest only after he refused to give you consent to search the vessel?

A. No, sir.

Q. You didn't say that on direct testimony that after that you all asked to check the ice hole that he asked if you had a search warrant, you said you didn't need a search warrant and then that you arrested him because of no registration, you didn't say that to Mr. Fowler about five minutes ago, exactly in that order?

A. I stated that Mr. Garcia asked if we had a search warrant and I advised him that we did not have a search warrant that we were not searching the boat.

Q. You didn't tell them you didn't need one?

A. I didn't need a search warrant, I wasn't searching the boat.

Q. What do you call Officer Soli looking in the, opening up and looking in the compartment where the groceries were and opening up and looking where the ice is, you don't call that a search?

A. I don't know whether she asked Mr. Garcia if she could check what was in the compartment back there, I do 't know whether that was a search or not.

Q. Okay, you don't have an opinion as a marine patrol officer if that was a search or not?

THE COURT: I'm not going to let you ask him his opinion as to what somebody else did.

Q. Okay, but you saw her open up and look in the compartments?

A. Yes, sir.

Q. You saw her open up and move whatever she had to move to be able to go down and look into the ice hole, right?

A. No, sir, it wasn't an ice hole, it was a box built up on the transom of the boat.

Q. Did you see her remove the top or something so that she could look into that wood box?

A. Yes, sir, she lifted the lid on the box.

Q. And that was prior to Mr. Garcia being arrested?

A. Yes, sir.

Q. And at what point and time was Mr. Garcia arrested, didn't it come after he refused to allow the vessel to be searched and asked about a search warrant?

A. Yes, sir.

Q. And at that point and time he was under arrest where was he, did you then order him to come over to your vessel?

A. Over to the side of his boat, yes, sir.

Q. What type of crime is it not to have the registration on board?

A. Second degree misdemeanor.

Q. Do you ordinarily write a summon for that or do you take the people into custody?

A. It depends whether they are residents of Monroe County or not.

Q. Did you ascertain the residency of Mr. Garcia?

A. It depends whether they are residents of Monroe County or not.

Q. Did you ascertain the residency of Mr. Garcia?

A. He advised that he had just started fishing out of Woodsy Niles for one day.

Q. Did you ask him where he was a resident of?

A. No, sir.

Q. Did you write him a summons?

A. No, sir.

Q. You described the weather as being clear that night, right?

A. Yes, sir.

Q. And, did you give direction to Mr. Garcia to open up any other holes?

A. Only after he said what he had on the boat.

Q. Okay, at that point you hadn't seen any marijuana, correct?

A. No, sir.

Q. At that point you hadn't smelled any marijuana?

A. No, sir.

Q. Did Mr. Garcia, had you warned Mr. Garcia of his rights prior to his statement about the boat containing marijuana?

A. No, sir.

Q. Had you been asking Mr. Garcia several questions from the time that you stopped the vessel prior to warning him of his rights?

A. I asked him several question, yes, sir.

Q. He was answering your questions, correct?

A. Yes, sir, in relation to the papers of the boat and where he fished out of.

Q. And at that point from the time that you stopped Mr. Garcia, was he free to leave if he just said, 'I just want to go

ahead and go', would you have let him go on?

A. Not without producing some papers of some kind, no, sir.

Q. Okay, and he'd been as far as you know, when you stopped the vessel legally and lawfully on his way coming down Hawk Channel, what is the name of the channel?

A. Hawk Channel, yes, sir.

Q. He was coming down Hawk Channel, right?

A. Yes, sir.

Q. You caused the boat to stop, correct?

A. Yes, sir.

Q. You then started these questions and answers, correct?

Q. Of the registration for the boat, yes, sir.

Q. And prior to his statement about the marijuana on board, you had reason to

believe that he did not have a registration, is that correct?

A. He hadn't produced one at that time, no, sir.

Q. Okay, is the registration necessary to be on board every vessel in Florida waters?

A. Whenever it is in operation, yes, sit.

Q. What about a vessel from, let's say, a vessel that's home ported in Texas, when you say operated do you mean moving through our waters or do you mean fish in our waters and landing crawfish or what have you in our waters?

A. If they're commercial fishing in Florida they have to commercial registration.

Q. Had you ever seen this vessel commercial fishing in Florida waters?

A. No, sir.

Q. Didn't the man tell you that the vessel was going to be commercial fishing in Cay Sal area?

A. Yes, sir.

Q. Is Cay Sal in Florida waters?

A. No, sir.

Q. He just told you that he had been out of Woodsy Niles, right?

A. If he was selling his fish in the State of Florida, at Woodsy Nile's which is in Monroe County, Florida he would have to have a Florida registration aboard the boat.

Q. Had you ever seen him sell any fish in the State of Florida?

A. No, sir.

Q. Had anybody ever told you that he sold you any fish in the State of Florida?

A. No, sir.

Q. Did you have any reason to believe that he had sold fish in the State of

Florida, nobody had ever told you, you never seen it?

A. I had the man's statement that he fished out of Miami and that he had just moved down to Woodsy Niles for one day.

Q. They moved down to Woodsy Niles for one day, he didn't tell you that he sold any fish in the State of Florida, he didn't tell you that he commercial fished in Florida waters, right?

A. No, sir.

Q. And nobody ever told you that that vessel had been commercially fished in Florida waters or that the catch from said vessel was sold inside the territorial waters of Florida, right?

A. No, sir.

Q. And, if he did not fish in Florida waters and if he did not sell his catch in Florida waters, he did not need a Florida registration, right?

A. If he operates out of a port of Florida, yes.

Q. That is if you fish here and if you sell your catch here, right?

A. Yes, sir.

Q. And if you don't sell your catch here and if you don't fish in Florida waters you don't need one?

A. No, Sir.

Q. Did you make any comments to Jenna Soli whatsoever concerning the possibility of marijuana being aboard this vessel prior to your stopping of the vessel?

A. No, sir, I did not.

Q. You told her nothing whatsoever?

A. No, sir.

Q. Did you call on your radio to your home station or anything like that when you decided to approach this vessel?

A. No, sir, I did not, it was after midnight, at that time we did not have a

dispatcher that was on the radio after midnight.

Q. What time did you stop the vessel?

A. Just after midnight, in the proximity of the midnight hour between the 17th and going into the morning of the 18th.

Q. Give me some hours to work with?

A. Twelve o"clock.

Q. Didn't you request or give direction to Mr. Garcia and Mr. Casal to open up the forward ice holes so Office Soli could search and look down there?

A. Yes, sir, after he had advised me that there was grass and then after I advised him of his rights that there was marijuana on the boat. I asked him if he would assist her in opening the hatch.

Q. And he acquiesced in your direction and did so?

A. Yes, sir, he did, she couldn't lift the hatch by herself.

Q. At the time that you searched the vessel, the Captain was already under arrest, right?

A. Yes, sir.

Q. Was the vessel in such a place that it could be anchored?

A. Not readily, no, sir.

Q. Was it a short place from safe anchorage?

A. I would say yes.

Q. Did you give the captain the option of accompanying you and allowing the vessel to continue on with the mate?

A. No, sir, not after the man advised me the boat was loaded with marijuana.

Q. Prior to the time that you opened up the hole, all you had was his bare statement, right?

A. Yes, sir.

Q. And at that time you hadn't seen or smelled or observed anything which you thought to be contraband?

A. No, sir.

Q. And then I asked you if you gave him the option of anchoring the vessel and accompanying you or allowing the vessel to continue on under the direction of the mate.

A. It's a documented boat, I don't normally take the captain off a documented boat whether he is assigned on captain or not, I don't normally take a captain off of a documented vessel, under the circumstances out there, in the middle of Hawk's Channel, midnight, I don't think I'd be using sound judgment doing such.

Q. Tell me all the conversation that you overheard from your vessel that took place on the other vessel?

A. I don't know what you're referring to.

Q. Tell me anything you heard, tell me what conversations you overheard, you never went aboard said vessel until it reached back to Key West, right?

A. Right.

Q. When you were out there side by side, I just want to know, from your boat what exact words or conversation you overheard on the other boat?

A. I heard Jenna ask Mr. Garcia about the registration papers, something

about some safety equipment after which she appeared on the back deck,

Q. Where did she appear from?

A. She went in the side door.

Q. Of the wheel house?

A. Yes, sir, which is the wheel house and the cabin is all the same, the bunks are on the back part of it the wheel is up forward, the kitchen is in the right, at the start end part of it, she walked out the back door of the boat of the wheel house cabin where her and Mr. Garcia were standing, there were some words exchanged.

Q. Tell me what you could overhear, tell me the exact words.

A. The next she called over to me and she said, 'Mark, there is no ice in this box and there is very little groceries and what are here look rotten.'

Q. Okay, did that cause any suspicion in your mind?

A. Yes, sir, it sure did, the man said he was going to Cay Sal, you wouldn't very well go with rotten groceries, plus the fact that he didn't know anything about where the registration papers were at and he wasn't the signed on Captain had my suspicion aroused, he said he had fished out of Woodsy Niles for one day which he could have.

Q. Under arrest for no registration, right?

A. Right, then afterwards, you asked me what I heard from the boat.

Q. I just want to know what you heard.

A. After I advised Mr. Garcia that he was under arrest for not having registration, he replied, that there was no need to go any further, the boat is loaded with grass, at which time I moved back to the side of his vessel.

Q. And what did you do then?

A. That is when I advised him of his rights.

Q. Okay, so then when, and that's the way it happened, what you just told me, right?

A. Yes, sir.

Q. Okay, so now you just told me that when Officer Soli said that she wanted to go up and check the forward part of the boat, right?

A. She asked consent to check the forward hole, yes, sir.

Q. And he said no and wanted to know if you all had a search warrant?

A. Yes, sir?

Q. You then replied to him, after you evaluated the circumstances, you told him that you did not need a search warrant, right?

A. Yes, sir, we were not searching the vessel, I stated that earlier.

Q. But you told him you did not need a search warrant.

A. I stated that earlier, I said . . .

Q. Just answer my question.

A. I advised him I didn't need a search warrant.

Q. Okay, in reply to my question, you've given us a narrative and now I want to go through with it, okay?

A. All right, sir.

Q. You told him after evaluation that you did not need a search warrant, that you weren t searching the vessel.

A. Right.

Q. Okay, yet Officer Soli had informed him that she wanted to go and check the forward ice hole, right?

A. She asked if she could check the forward ice hole.

Q. She was not given permission to check the forward ice hole.

A. No, sir.

Q. So then you informed him that you did not need a search warrant, did you inform him that you intended to search the vessel anyway, that you didn't need a search warrant?

A. My intent wasn't to search the vessel.

Q. Okay, you then placed him under arrest for not having the registration on board, right?

A. Yes, sir.

Q. Subsequently to placing him under arrest for not having a search warrant, did Officer Soli or you communicate your intent to go check the forward ice hole?

THE COURT: He did not arrest him for not having a search warrant.

Q. Excuse me, you arrested him for not having registration on board, right?

A. Yes, sir.

Q. Did you or Officer Soli then communicate your intent to check the forward ice hole of the vessel?

A. No, sir, I didn't, I don't know whether Officer Soli did or not.

Q. Did you make any apparent attempt, or did Officer Soli make an attempt to go check the forward ice hole at that time?

A. She was already standing on the forward part of the boat.

Q. Okay, then subsequently to being arrested is when Mr. Garcia told you that there was no sense checking the forward ice hole because there was grass in

it, right? Isn't that what you told me a couple of minutes ago?

A. Wait a minute now, will you rephrase that question, I mean, will you state that question again.

Q. After being arrested, after you told him, 'you're under arrest for not having registration on board, Officer Soli is up in the front on top of the ice hole, isn't that when you told him, isn't that after you told him, 'you're under arrest for not having registration on board, right, and Officer Soli is up there, isn't that when he replied to you, well, there is no sense checking the forward ice hole, because there is marijuana on board?

A. When Officer Soli asked to check the forward hole, Mr. Garcia asked about the search warrant.

Q. It's a real simple question, I want to know if the arrest didn't come

before the statement, 'there is no sense checking the forward ice hole, there is marijuana on board', isn't that what you told me about two minutes ago?

A. That the arrest occurred before?

Q. His statement.

A. Yes, sir.

Q. Okay, the arrest happened first, then he came out with his statement.

A. Yes, sir.

Q. And said, 'no sense checking the forward ice hole, there's marijuana in it, right?

A. Yes, sir.

Q. And then you asked him or he acquiesced with your direction to go help Officer Soli lift up whatever covered the forward ice hole, right?

A. After he had been advised of his rights he said again, that there was marijuana on the boat.

Q. Okay, but the first time that he said there was marijuana on the boat was after the arrest and prior to the warning of rights, right?

A. Yes, sir

Q. Okay, so he had already been arrested, he told you that and you then formally warned him of his rights and then you asked him again, is there marijuana on board, right?

A. I asked him what was on the boat and he stated, 'marijuana', the first time he said, 'the boat is loaded with grass'.

Q. Okay, and subsequent to all that you then directed, he wasn't free to move, you weren't going to let him take the boat anywhere, were you?

A. Not at that time, no sir, I was not.

Q. You then, you or Officer Soli through you went ahead and searched the forward hole?

A. With the assistance of the mate and the captain of the vessel, they went up and they moved the fish traps off the top of the ice hole where the hatch was at and they lifted the hatch themselves, like I say, the hatch was too heavy for Officer Soli to lift by herself, I don't know whether I could have lifted it by myself or not.

Q. Your primary reason for believing that marijuana was on board the vessel was Garcia's statement to you that the boat was loaded with grass, right?

A. Yes, sir.

MR. JAMES: Thank you, I have no further questions.

THEREUPON, REDIRECT-EXAMINATION

BY MR. FOWLER:

Q. Officer Walker, you refer to Woodsy Niles a couple of times, what is Woodsy Niles?

A. Woodsy Niles is a fish house that's located on Stock Island on the eastern end of Stock Island on the south side. They buy fish, craw fish, stone crabs, they supply fishermen with their supplies.

MR. FOWLER: Thank you.

MR. JAMES: I have no other questions of this witness.

MR. FOWLER: The State will call Jenna Soli.

THEREUPON, JENNA SOLI was called as a witness and after being duly sworn, testifed as follows:

DIRECT-EXAMINATION

BY MR. FOWLER:

Q. State your name and occupation, please?

A. Jenna S. Strecher, Florida Marine Patrol Officer.

Q. How long have you been with the Marine Patrol?

A. Approximately a year and a half.

Q. During that time have you ever been known by any other name by the Marine Patrol?

A. Jenna Stretcher Soli.

Q. You were employed by the Marine Patrol on the 18th of September of last year?

A. Yes, I was.

Q. Were you on patrol on the early morning hours of that day?

A. Yes.

Q. Who were you with?

A. Officer Mark Walker.

Q. Did you have the occasion to stop any boat during the early morning hours of that day?

A. Yes, I did.

Q. Will you described what boat is was, describe the boat?

A. It was a large, white, blue trimmed fishing vessel, several wire fish traps on it and the San Rafael written on it.

Q. Was there any particular reason you were patrolling that area, anything special you were on the lookout for?

A. Yes, there was, there had been a lot of trap robbing, lobster traps in the area and Officer Walker and I had been routinely checking the area for boats.

Q. When you came up to this particular boat, the San Rafael, what did you do?

A. Officer Walker told me approximately 50 feet from the boat to put the spotlight on the boat, and we came

alongside the boat, two men came out of the cabin, we identified ourselves as Florida Marine Patrol.

Q. How were you dressed?

A. We were in uniform, both of us.

Q. What happened then?

A. We advised the men that we would like to see their papers, registration papers from the boat.

Q. Did they produce any?

A. They came out with an envelope, handed Mark Walker a piece of paper which I didn't personnally observe myself, cause I was holding the boat off the side, the second piece of paper I did see, it was documentation papers, I saw them, you know, they were pretty obvious, they are about this long and I could see the printing on them, documentation papers.

Q. To your knowledge did you see any Florida Registration papers produced?

A. No, they could not produce registration.

Q. Did they make any statements concerning the registration papers?

A. Yes, after Officer Walker asked the third time for the papers, third or fourth time, he kept asking, 'we like to see the Florida Registration papers', the man said, 'I guess they must not have gotten them'.

Q. What happened next?

A. I request permission to board the boat and the gentleman granted permission and helped me aboard the boat.

Q. And what did you do once you got on board?

A. I went into the cabin with both gentlemen, I was going to try and help him find some more papers, that is what I

was trying to do, just routine safety check of the boat and I walked through the cabin, everything was sort of askew, I didn't tough anything in the cabin, I would just point.

Q. Was there anything in particular unusual about the cabin?

A. Well, like I said, it was pretty routine, I was looking for safety equipment, I didn't see any in open view and I asked him, I don't know if I asked him about safety equipment in particular, I was looking around if there was safety equipment, everything was torn up in the boat, we went towards the back of the boat and I asked him if I could see his catch that was on board.

Q. What was his reply?

A. He said that he didn't have any seafood on board at this time, he was going to be going out fishing at Cay Sal Bank.

Q. Did he give you any indication where he was fishing from?

A. Yes, he did, in previous conversation with Officer Walker, he had said that he had been to Woodsy Niles, he was from Miami, he had been to Woodsy Niles and he had just been there like one day, I don't know if he had iced up, this is the impression that I had that he had iced up there and that he was going to be fishing out of there.

Q. You asked him for permission to look in his icebox, what if anything did he say?

A. He said, 'yes, fine', so I looked in the back box there and there was some rotten food, no ice, which seemed a little strange since he'd just said that he was going to go fish at Cay Sal banks, it seemed like they didn't have sufficient food or any ice on board, at least as of this point.

Q. What happened then?

A. I said 'I'd like to check your forward hole'.

Q. What kind of hole or compartment are we talking about?

A. In most fishing boats they have a place where they normally store seafood products or their ice or whatever when they're going out to fish or coming back from fishing, this is the forward hole, it is a flat box built into the boat.

Q. It's a fishbox?

A. Yes.

Q. An what happened at this point?

A. Mr. Garcia said at this point, he asked me if I had a search warrant.

Q. Okay, and was there any response by you?

A. I said, 'no I don't have any search warrant but I would like to see what you have, you know, what seafood products you have, I'd like to check your forward catch box, I think I said it again.

Q. And what happened then?

A. I believe Officer Walker, upon hearing the gentleman say this, did state he'd be under arrest for not having the papers, the correct papers aboard the boat.

Q. And after Officer Walker informed the individual that he was under arrest, what statements if any did you hear?

A. Mr. Garcia then said that, 'there is no use of you going any further, there's grass aboard'.

Q. Was that in response to any questions by you to Mr. Garcia?

A. At this point, I believe it was after Officer Walker told them that he was under arrest for no registration.

Q. Was there any conversation between the time Officer Walker said 'you're under arrest' and Mr. Garcia stated, 'there is grass on the boat'?

A. All I remember is my saying that I would like to check his forward check, I don't remember any particular conversation, I don't recall any.

Q. Subsequent to that, did you in fact check the forward hole?

A. I didn't check it, Officer Walker called the gentlemen over to the side, both of them, of course after that statement he placed them both under arrest and read them the Miranda Warning, then he asked, both of them I guess but Mr. Garcia answered, now, what was aboard the boat and he said, there is marijuana on board.

Q. Will you describe the demeanor of these two individuals while this encounter was going on?

A. From the time that we went into the cabin, they seemed to be sort of agitated.

Q. What do you mean by agitated?

A. They were apprehensive, they were looking at each other a lot and, of course I didn't suspect anything at this point, I just sort of picked up on it that they were looking at each other a lot and after I check the back box and of course after we walked forward to the hole and they suddenly asked for a search warrant, that seemed a little strange to me too.

Q. Where exactly did you stop the San Rafael?

A. We had just passed Nine Foot Shoal Light on routine patrol.

Q. Approximately how far out is that?

A. After we passed the light it's about a mile and a half out, maybe two miles.

Q. Any possibility of it being over three miles?

A. No, we were definitely within our jurisdiction.

Q. Which is what?

A. Three miles on the ocean side to the nearest point of land.

Q. It was within the waters of Monroe County?

A. Yes.

MR. FOWLER: You may inquire.

THEREUPON:

CROSS-EXAMINATION

BY MR. JAMES:

Q. You said on the outside of the Nine Foot Shoal Light?

A. We were coming south, we were on patrol a little bit farther north of the Nine Foot Shoal Light and came down past the light, and up to that point, I don't know exactly how far Nine Foot Shoal is but we weren't more than a quarter of a mile from Nine Foot Shoal Light, if that.

Q. How far, from right were you were, how far does three miles go out from the point of land?

A. That I can't tell you, I don't know personally, as of this time I was very new and still don't know exactly.

Q. You're not exactly sure where three miles is out there, then, at this point, there is no reference marker?

A. Well, Nine Foot Light, I could see that it was blinking to the left of me, right when we passes it and then this boat was right here in the water.

Q. In what direction were you from Nine Foot Shoal Light?

A. That I can't tell you again, we had just passed it.

Q. You just passed it, north, south, east or west of it, I just want to know.

A. Okay, we passed it in the inside of the Nine Foot Shoal Light because apparently there were some shoals out there that Mark wanted to stay away from.

Q. Prior to your stopping of the vessel, that vessel, you didn't have any reason to believe that the vessel was doing anything but lawfully operating down Hawk's Channel, right?

A. He was stationary in the water when we first observed him.

Q. Okay, have you ever seen anybody rob traps from a shrimp boat, use a shrimp boat to go and rob traps?

A. That was not a shrimp boat, it had a trap puller on the front part of the boat.

Q. Did you see them take any action whatsoever which would be consistent with robbing traps, did you see them using spotlights in the water to spot the floats or anything like that?

A. No, sir.

Q. Did you see them move in a serial of small moves, stop, as if the were pulling traps?

A. Not at this time.

Q. So, you didn't have any reason to believe that that specific vessel was involved in any trap robbing, right?

A. No.

Q. What was your purpose in going aboard the vessel?

A. I felt that I was doing as a Marine Patrol Office Officer in checking

boats that were on the water and the boat couldn't produce the registration and I went aboard the boat for routine safety check.

Q. That's why you went aboard the vessel to perform that routine safety inspection check at midnight, is that why you went aboard this vessel?

A. It doesn't make any difference what time it is.

Q. Okay, I just want to know specifically why you went aboard the San Rafael.

A. In my mind?

Q. Yes.

A. To me, I was just doing my job, I had so suspicions when I went aboard the boat, the gentlemen could not produce the paper, I went on board the boat.

Q. When the gentlemen could not produce the registration papers, did you or

anyone else place him under arrest at that time?

A. No, sir.

Q. When you went in the wheelhouse, you were looking for what, the papers?

A. I would have helped them look further for papers, we didn't dig in anywhere.

Q. You went aboard but you didn't actually look for any. Did you or any other officer place the gentleman under arrest for any safety violation, any lack of safety equipment?

A. Not as of that point.

Q. Any any point, did you?

A. No.

Q. You didn't make any arrest aboard the San Rafael for lack of safety devices.

A. I didn't do a search for safety equipment, I just said I didn't see any in plain view.

Q. Okay, but that was your purpose on going on board, though.

A. There's many reasons why I went on board.

Q. I asked you why you went on board, did you perform a search for safety devices?

A. No, I didn't search for them.

Q. Were you looking for safety devices or documentation papers when you looked in the ice box on the back of the boat?

A. No, sir, I was looking for any kind of seafood products that he might have aboard the boat.

Q. Hadn't the captain told you that there was no such seafood on board?

A. Well, often people do that and we still say we'd like to see your catch.

Q. Okay, is that why you were searching the vessel looking for safety, I mean, looking for seafood products, was that your purpose in searching the vessel?

A. I asked him if I could see.

Q. What was your purpose of searching the vessel?

A. I didn't feel like I was searching, I was doing a routine check.

Q. For what?

A. For any kind of seafood product he might have had on board, in my mind, I was fresh out of school, I was checking the boat and doing my job.

Q. What about when you looked in the grocery box? Were you looking for seafood products or papers then?

A. Not for papers, for seafood products, yes.

Q. Where the groceries were, okay.

A. It was a regular catch box that is why I asked him if I could see it.

Q. What rights did you hear, if any, Officer Walker advise Garcia and Casal?

A. The Miranda Rights.

Q. Tell me what they are, did you hear him say, did you hear what rights he told them?

A. He read them off a card.

A. Yes, I remember hearing them, you have the right to remain silent.

Q. Tell me right now, exactly what words you recall Walker saying to the Defendants?

A. I don't have them memorized so I can't tell you.

Q. I didn't ask you to memorize anything, I just want you to think back and use your memory, tell me what you remember hearing that night of Walker telling the Defendants and if you don't remember you can tell me that too.

A. I remember that it was the Miranda Rights read off a card, but I can't tell you exactly what the wording was.

Q. Okay so you . . .

A. You have the right to remain silent, the right to have an attorney present, you can go on and on.

Q. Maybe my question isn't clear, I just think back to the night or early morning house of September 18th, you heard Officer Walker advise the Defendant of something, right?

A. Uh huh.

Q. I just want you to think back now, and not remember what the Miranda

Rights are, not remember the card, tell me now what you recall Walker telling them that night?

A. I have to answer the same, after he placed the two of them under arrest, told them to come over, he told them, you have the right to remain silent, anything you say can be used against you in a court of law.

Q. Do you remember anything else that he told them?

A. Just that, he read them their rights and he asked the question again about what was aboard the boat?

Q. Okay, had there been a dialogue between you and Walker and the Defendant Garcia at the time you stopped the vessel and Garcia was answering your questions and Walker's questions from time to time? Do you recall that?

A. I recall asking him if I could check his box, I don't know what you're looking for, I really don't.

Q. I just want to know if there was a series of questions between you to Garcia and Walker to Garcia in which he responded to your questions?

A. Yes, after they told me there was marijuana on board, I was scared and I remember he said come on to the side and

read them their rights and then he asked them to help me with the catch box and they went and lifted it all by themselves.

Q. I just want to know, prior to the time of Garcia making the statement, 'there's marijuana on board', if there hadn't been a series of questions and answers between the officers and Garcia, yes or no?

A. I don't recall anything other than what I already told you.

Q. You don't remember any questions which came before that statement?

A. Yes, mine asking if I could check the catch box.

Q. Okay, do you recall any other questions?

A. No.

Q. Do you recall questions about where he had been, where he was going, who was the owner of the boat, where were the

papers on the boat, do you recall those questions and answers?

A. Some of them which we have already gone over.

Q. I'm asking you just a simple yes or no, I'm trying to job your memory that indeed there was questions between the officers to Defendant Garcia before the statement about the grass?

A. I can't remember anything in particular other than trying to see his box, that's all, the catch box, what seafood he had on board, this is what was in my mind.

Q. Did Officer Walker say anything to you at the specific time that you all spotted the lights of the vessel and told you to put your spotlight on the stern, was there any conversation whatsoever concerning that vessel between you and Officer Walker?

A. Sure, he said, 'let's go check the boat'.

Q. What else did he say?

A. He mentioned of course that they were sitting still in the water which he had a lot better eye than I did then, he was trying to teach me, you know.

Q. I just want to know hwat he said.

A. 'When we get close to the boat, I'm going to tell you when to turn the spotlight on, hold the spotlight and when I tell you to turn the spotlight on, turn the spotlight on.'

Q. Did he tell you any suspicion that he may or may not have had concerning this vessel prior to the time your reaching the vessel?

A. No, I had no idea we were even looking at a smuggling boat, I'll tell you that truthfully, before I went on board that boat, I had no idea, I didn't even think of grass.

Q. During the time that you were walking all aboard the boat until the time that you looked in the forward hole, you didn't actually see any marijuana on that boat, did you?

A. No, sir, I didn't

Q. You didn't smell any marijuana?

A. No, honestly, I did not.

Q. Now, there was a statement when you and Garcia when you said you wanted to look in the forward hole, correct, asked permission?

A. Yes, I said I'd like to see the forward hole, or the catchbox.

Q. And he didn't give you permission, right? He wanted to know whether you had a search warrant?

A. He asked if I had a search warrant and I said, 'no sir, I don't, but I'd like to check your forward box'.

Q. Did Officer Walker then make any comment concerning the need or lack of need of a search warrant to Garcia?

A. I think he might have said, 'no, we don't have one', I don't remember him saying that, I remember, I said, 'no, I don't have one, I'd like to check your forward box'. Then he put them under arrest.

Q. What did he put them under arrest for?

A. At that point?

Q. Yes?

A. For registration, that I recall.

Q. So the, that occurred after the conversation concerning the need or whether a search warrant existed or not, right?

A. Yes, after Garcia asked me if I had a search warrant.

Q. What happened then after he placed him under arrest for no registration?

A. He called the two men over to the side of the boat and read them their rights, wait a minute, Garcia made a statement that there was no use going any further, at this point he said, 'there's grass aboard', that was the first statement.

Q. No use going any further, there's grass on board?

A. Right, there's no use in you going any further.

Q. What was the next thing that happened?

A. He brought them over to the side of the boat.

Q. The two of them?

A. Yes.

Q. Okay, what happened then?

A. He read them the Miranda Rights.

Q. Okay, did he tell either one of them that they were under arrest then?

A. Oh yeah, he told them both, 'you are both under arrest'.

Q. For what?

A. I don't recall exactly whether he said for grass or what.

Q. And then he read them their Miranda Rights, correct?

A. Yes.

Q. At that point you still hadn't observed any marijuana, right?

A. No, I hadn't observed any.

Q. And you hadn't smelled any marijuana?

A. No, sir.

Q. And Walker was still aboard his vessel, he hadn't come aboard the San Rafael, right?

A. Right, he hadn't.

Q. So he placed him under arrest for possession of marijuana based on Garcia's statement, I guess, right, because you

hadn't seen or observed or smelled any, right?

A. No, because they didn't open the hole until after he read them their rights, they stated again that there was marijuana aboard, then he checked it.

Q. Okay, but at this point nobody had been in the hole, right?

A. No, sir, we were going on what the guy said.

Q. Did he say how much marijuana was aboard the boat?

A. No, sir, he didn't.

Q. He just said, 'there's no use going any further, there's grass aboard the boat,', he didn't tell you whether it was one gram, ten grams, one hundred pounds, one hundred thousand pounds, or any amount?

A. I had no idea what was aboard the boat.

Q. You had no idea of the weight of the amount?

A. No.

Q. So, they were placed under arrest at that point?

A. Yes.

Q. Okay, so what happened next?

A. After Garcia said, 'there's marijuana' for the second time, Officer Walker asked, 'will you help this officer ascertain that fact', I forgot the exact wording he said.

Q. Verify that fact?

A. Right.

Q. So then Officer Walker asked him to perform a certain function to assist you, right?

A. Yes.

Q. Okay, now prior to that time, the second statement when he said, 'there's marijuana on board', he didn't say how much?

A. No.

Q. So then Officer Walker asked him to help you, right?

A. Yes.

Q. What happens then?

A. Casal and Carcia went to either side of the box, lifted the lid, there was a white freezer box top, this is a typical freezer and as I held the lid up after they had lifted it, it was stuffed to the gills.

Q. It was stuffed to the gills with what, tell me exactly what you observed.

A. An overpowering odor of cannabis sativa, marijuana, it looked like big bales of grass.

Q. Could you see a vegetable substance?

A. There was little particles of it.

Q. That you could see?

A. Yes.

Q. Did you have a search light?

A. No, but the boat was illuminated from Officer Walker's spotlight.

Q. And from Officer Walker's spotlight you could see down that hole to see leafy vegetables?

A. No, this was packed right to the top and there was little stuff laying around, right under that white.

Q. At that point and time had you observed the smell of marijuana before?

A. Yes, sir, I had.

Q. At that time, how many times had you observed it?

A. Since 1969, I've smelled grass all over the campuses of the United States.

Q. Well, that's burning, when somebody is smoking it, right?

A. Yeah.

Q. Was this being smoked?

A. No, it was not, I have also seen it in its package form, I mean I've seen it

before, I use to work in the security department of the University of Miami, we use to see a lot of grass, I know what it smells like.

MR. JAMES: I have no further questions.

THE COURT: Any redirect?

MR. FOWLER: No sir.

THEREUPON; JOSEPH A. VALDES was called as a witness and after being duly sworn, testified as follows.

DIRECT-EXAMINATION

BY MR. FOWLER:

Q. Will you state your name and occupation, please?

A. Joseph A. Valdes, Jr., Detective Lieutenant with the Monroe County Sheriff Department.

Q. And were you so employed on the 18th of September of last year?

A. Yes, sir.

Q. Did you have occasion on that date to speak with either Mr. Garcia or Mr. Casal?

A. Yes.

Q. And where ws that, sir?

A. It was at the Coast Guard Station, Key West, Florida.

Q. And, did you at that time speak to these individuals?

A. Yes, sir.

Q. Before speaking to them did you have any preliminary conversations with them?

A. Yes, I did.

Q. What did those conversations entail?

A. When Garcia and Casal were brought in by the Marine Patrol Agents, Walker and Soli, and they were taken off the boats, at that time I advised the subjects of their constitutional rights, I determined that

one subject could speak and understand the English language which was Garcia and that Casal did not understand English, so I advised Casal of his constitutional rights in Spanish and he indicated to me that he understood, and I advised the other subject of his constitutional rights in English which he advised me he understood, this subject also understood Spanish.

Q. What rights did you adivse Mr. Casal in Spanish?

A. He had the right to remain silent; anything he said could be used against him in a court of law; that he had the right to have his attorney present with him before we questioned him; that if he couldn't afford an attorney the State would appoint one on his behalf to represent him; that he had the right to have an attorney with him before I asked him or he answered any questions.

Q. As to Mr. Garcia, how did you advise him of his rights?

A. The same Miranda warning.

Q. Did you read them or give them to him?

A. No, verbally.

Q. And did either one of the two individuals make any statements to you after that?

A. Yes.

Q. And what were they?

A. Casal in the presence of Garcia, in response to my questions stated to me that he had knowledge that there was marijuana on board the San Rafael when it was loaded and also stated to me that it was loaded in the area of the Bahama Banks.

Q. Did Mr. Garcia say anything in response?

A. He said he didn't want to make any statements, that he wanted to talk to his

lawyers and I didn't attempt to question him any further.

MR. FOWLER: No further questions.

THEREUPON:

CROSS-EXAMINATION

BY MR. JAMES:

Q. Did they execute a written waiver of rights?

A. No, sir.

Q. And who else was present besides you and them that spoke Spanish?

A. No one.

Q. And they never signed a written waiver of rights?

A. No, sir.

MR. JAMES: Thank you, that's all I wanted to know.

THE COURT: Any redirect?

MR. FOWLER: No, sir. The State has no further witnesses.

MR. JAMES: Sir, I know that you've had almost very similar factual situation, somewhat I guess in the Miranda case when we talk about stopping a vessel which is under lawful operation, I'm not going to rehash the case law with the Court, I know the Court's ruling in that case but I think that when a vessel is going down in lawful operation, that there is some need to do more than, there should be some more information in order to stop a vessel because of mobility factor under the Carroll doctrine you could probably stop an automobile without a search warrant when you need one in other circumstances, but in this case the vessel had lost its mobility factor, it was there, and I don't think the State of Florida underneath the guise of a statute and underneath the state they give our Florida Marine Patrol an apparent blanket authority to violate the Fourth

Amendment, and I know that underneath the statute it says they are allowed to stop to perform safety checks and perform documentation checks and what else. I think that statute itself belies in the face of the Fourth Amendment and would urge this Court to declare it unconstitutional, the authority given the Marine Patrol under the guise of this statute.

THE COURT: I don't think you made your motion based on the constitutionality of the statute.

MR. JAMES: No, I'm not but at this point I'm alleging it as one of the grounds by which my motion...

THE COURT: You didn't start out on your motions stating those grounds, I don't think.

MR. JAMES: I know that, but I would like a ruling.

THE COURT: I'm not going to rule on constitutionality that has not been presented to the Court on those grounds.

MR. JAMES: Well, I think without that statute they have no justification and that is the only justification, that statute for stopping a vessel that in the opinion of the officers was completely lawfully and legally operated and they had no reason, both officers, whatsoever to stop this vessel, so what gives them the right to stop this vessel, certainly no the Fourth Amendment, then they can't fly and if they are not going to be able to use that statute, that the State can't, the State has to rely on that statute for justification to stopping this vessel, if not, we've got a tremendously, completely from its inception, illegal search and seizure because there was no reason to suspect this vessel whatsoever of anything, there was no

probable cause to stop the vessel. Probable cause arose, if at all, subsequent to the stopping of the vessel, the initial stopping is invalid as in a car search, then the stopping of this vessel is invalid, the only thing that the State can rely on is the statute that seems to give the right to a Marine Patrol to stop any vessel anywhere in Florida waters without any reason whatsoever, so they have to rely on that statute, and I'm urging the Court that that statute should be held unconstitutional by this Court and no search and seizure should be upheld based on the validity of said statute. I also submit that the probable cause, the marijuana should be suppressed as the fruit of a poisonous tree, of an improper confession relying on Won Son vs. United States, and I say the original confession by Mr. Garcia is completely improper, that he was under

arrest by the testimony of the officrer, that the confession and statements from Mr. Garcia came subsequent to his arrest and prior to his warning of rights. I'm sure the State is going to attempt to rely and say, it was merely a spontaneous declaration. Well, we had dialogue going on for quite some time in questions and answers and questions and answers and it was not, I think a spontaneous declaration is when somebody runs into a police station and says, 'I just shot my neighbor', it was not a result of any custodial interrogation and I don't think that that confession has to come as a result of a specific direct question, but if there's conversation going back and on between the officers and the Defendant and the Defendant in custody and not free to leave, as Officer Walker said, in fact is under arrest, as Officer Walker said, and has not been warned of his rights

and he then makes a statement that can not qualify as a spontaneous declaration and then they said that their finding of the marijuana and their search and seizure was based solely and completely as the result of the statement made by Garcia, that there is no other reason to believe that marijuana was on aoard, they hadn't smelled any, they hadn't observed any and other than some spoiled vegetables and the lack of ice in the icebos in the back, that that is no reason to believe that there was marijuana on board the vessel. I also submit that the original arrest of Mr. Garcia, that there was no probable cause for the lack of registration and second, I submit that the second arrest of Garcia and Casal for possession of marijuana was improper and that the officers had not through any of their senses had not observed any marijuana whatsoever, hadn't

seen any prior to the arrest, hadn't observed any, hadn't smelled any, hadn't detected any, all they had was the bare statement of Garcia at that point that quote, 'that grass was on board', nothing about weight, whether it was a misdemeanor, I submit if it had been less than five grams aboard that boat Garcia's statement would have been completely correct and yet the officers would not have been justified in arresting them, that arrest is improper and invalid and the fruit flowing from the improper arrest, the invalid confession are the fruit of this crime, all of which should be suppressed as fruit of the poisonous tree. I submit that their confession, the first one of Garcia should be suppressed since there was no, and all other confessions flowed as the direct result of this first statement, Thank you.

THE COURT: What says the State?

MR. FOWLER: Your Honor, first of all the State contends under Miranda which has already been cited by Mr. James, Hill v. State, a Federal Second case, the Marine Patrol Officers have the right to board the boat and inspect for a limited number of things, registration being one of them, seafood catch being another. The testimony in the record is that there were wire fishtraps aboard the boat, there was a puller on the boat, when the officer asked permission to inspect the back icebox, that was granted, at that point the story that had been received didn't match the physical surroundings, and when asked to inspect the catch hole further, that being the forward compartment, a warrant was requested. If Mr. Garcia wanted to state to the officers at that time that the boat was loaded with marijuana, which I believe it was Officer Walker's statement as to Garcia's statement

that there was marijuana on board. Mr. James is absolutely correct in his supposition as to what the State's argument would be, it was not in response to any questions, it was not an ellicited response, both officers testified at that time they had no idea there was marijuana on board the boat and the individual wasn't arrest for possession of marijuana at this time, he was under arrest for not having a registration, a Florida Registration Certificate which is required by State Law.

THE COURT: I want to pin it down, is this motion to suppress confession, is it directed to a particular statement, this seems to generalize it.

MR. JAMES: Yes, sir, I think it goes to all confessions and informations.

THE COURT: I don't think everything they said is a confession, you're talking about the statements, really. As I follow there are no written.

MR. JAMES: There are no written statements at all, they are all oral.

THE COURT: Just to clarify the record, I want to ascertain here, now what the statements are or what do you call a confession.

MR. JAMES: I call three separate statements as being a confession. The first one by Mr. Garcia, that said, that there was grass on board; the second statement supposedly by Mr. Garcia to the question, 'what's on board', answer, 'marijuana'; the third statement made by Mr. Casal...

THE COURT: Those are the two statements one going before them being read their rights and one after.

MR. JAMES: Yes, sir. And the third, is the statement by Mr. Casal, as I understand Casal made no statements to Walker, he made one to Valdes.

THE COURT: As I follow it that is the only time he said anything.

MR. JAMES: Right.

THE COURT: Motion to Suppress physical evidence is denied. Motion to Suppress confession is denied.

MR. JAMES: Your Honor, I will then move on the record now, being that we have statements, I move for a severance of the trial, I don't think the statements Mr. Garcia said are admissible in a trial involving Mr. Casal, and I don't think that Mr. Casal's statement to Mr. Valdes are admissible in a trial involving Mr. Garcia. I think we have a Bruton problem. I move for severance.

THE COURT: As I recall the statement of Casal, he didn't say anything as to the other Defendant, the note I have is that he stated that he had knowledge of marijuana being on board, that it was loaded in the Bahama Bank, that's the note I made.

MR. JAMES: I still think it is a violation of Bruton for that statement to come in, I think that's the type statement that no type of excising would make it permissible even though it refers strictly to himself, we've only got two people on board the vessel and I think a joing trial would violate their rights, and I move for severance. I don't think it's permissibly possible to try these two Defendants together in light of the fact that you're going to allow in the statements. It is certainly a hearsay declaration as to the other Defendant, their mere presence does not cure the hearsay.

THE COURT: What says the State?

MR. FOWLER: Your Honor, since the statement by Mr. Casal applies only to Mr. Casal, there is not a hearsay problem as it applies to Mr. Garcia.

MR. JAMES: You may not have a Bruton problem but you still have a hearsay problem, I submit that the statements are not capable of doing anything and no type of instruction to the Jury is going to cause them to consider that statement solely and completely as to the declarent.

THE COURT: I don't see where the statement attributed to Mr. Casal, the Defendant Casal in any way implicates Garcia, as I got it, there's nothing said, we did it or who was present or when the where being only the Bahama Bank. I can't see that, your argument is that the statement of one Defendant implicates the other.

MR. JAMES: Necessarily, I think the statement can implicate the codefendant without necessarily naming him by either name or description, and that's what I'm saying that that type statement does.

THE COURT: I'm just pointing out, I don't think that does that.

MR. JAMES: I submit, it is very naive to believe that a jury is going to consider that statement solely as to the guilt or innocence of Casal and not consider it in any fashion as to Mr. Garcia.

THE COURT: This isn't the case of one laying something on the other.

MR. JAMES: I don't think that that is the only thing that Bruton outlaws.

THE COURT: I'm going to deny the motion to sever.

****

STATE OF FLORIDA)

COUNTY OF MONROE)

I, RoseMary Fernandez do hereby certify that Motion to Suppress evidence and confession in the case of the State of Florida versus Constantino Casal and Omar Garcia was heard on September 20, 1978,

that I was authorized to and did report the proceedings in said hearing, and the foregoing pages numbered 1 through 60 constitute a true and correct transcript of my report of the proceedings in said hearing.

In Witness Whereof, I have set my hand this 16th day of March, 1979.

RoseMary Fernandez, Ct. Reporter

CASE NUMBER 77-853

STATE OF FLORIDA

vs

CONSTANTINO CASAL

OMAR GARCIA

I N D E X

NORMAN LEE

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IN THE CIRCUIT COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT,
IN AND FOR MONROE COUNTY,
FLORIDA. (CRIMINAL DIVISION)

STATE OF FLORIDA	)	
vs	)	CASE NUMBER
CONSTANTINO F. CASAL	)	77-853 CF
OMAR GARCIA	)	
	)	

T E S T I M O N Y

The above entitled case came on for trial before the Honorable Bill G. Chappell, Judge of the Circuit Court, Criminal division, in and for Monroe County, Florida, on September 20, 1978, pursuant to notice.

APPEARANCES:

RICHARD FOWLER, Assistant State Attorney, on behalf of the State.

MANUEL W. JAMES, Attorney-at-law, on behalf of the Defendants.

. . . .

THE COURT: Counsel for the Defendant reserves his opening statement until the Defendant's side of the case. State call your first witness.

MR. FOWLER: Your Honor, the State will call Norman Lee.

THEREUPON, NORMAN LEE, was called as a witness for the State, and after being duly sowrn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

Q. Mr. Lee, will you state your name and occupation?

A. My name is Norman Thomas Lee, and I am employed by the Monroe County Sheriff Department in Key West, Florida, as a criminalist, I operate the Sheriff Department crime laboratory and I am also property custodian for the Sheriff Department.

Q. In your capacity as porperty [sic]

custodian, have you brought anything with you today concerning this case?

A. Yes, sir, I did.

Q. When and where did you come in possession of it?

A. I received the items that I brought with me today which are behind the court reporter from Lt. Joe Valdes of the Monroe County Sheriff Department on September 19, 1977, at 3:00 P.M. in the afternoon at the laboratory.

Q. Mr. Lee, what items did you receive from Detective Valdes at that time?

A. I received two wrapped, white plastic packages, one clear wrapped large plastic package and also a clear plastic bag containing brown paper bags.

Q. Mr. Lee, I ask you to go and look at those items that you brought with you today and ask you if they are in the same condition as when you received them, if

they are in fact the same items that you received.

A. Yes, sir, they are. (After examining packages) Item 1, Item 2, Item 3 and Item 4.

Q. Who else has had access to these particular items since the day you received them?

A. The other person that has had access to these is assistant property custodian, Peter Montero of the Sheriff Department who works under my immediate supervision, alsc there is a key to the vault that is locked in the accounting office at the Sheriff Department in a sealed package for emergency purposes.

Q. Has Mr. Montero ever had access to these particualr [sic] items outside of your supervision?

A. No, sir, he has not.

MR. FOWLER: Your Honor, I'd like to

have these marked as Composite State Exhibit A, B, C and D.

THE COURT: All right.

MR. FOWLER: Thank you Mr. Lee, I have no further questions of Mr. Lee at this time.

MR. JAMES: I have no questions of Mr. Lee at this time.

THE COURT: All right, the witness may step down.

MR. FOWLER: The State will call Jenna Solly.

THEREUPON, JENNA SOLLY, was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

Q. Will you state your name and occupation for the record, please?

A. Jenna Solly Sprecher, Florida Marine Patrol Officer.

Q. And how long have you been with

the Florida Marine Patrol?

A. Approximately 1 1/2 years.

Q. During that period of time were you know [sic] by any other name.

A. Yes, Jenna Garland Sprecher Solly.

Q. Were you employed by the Marine Patrol on 18th of September of last year?

A. Yes, I was.

Q. Did you have occasion to be on patrol on the early morning hours of that day?

A. Yes, I did.

Q. Do you recall having come across a boat in the early morning hours of that day?

A. Yes, I do.

Q. Will you describe please to the ladies and gentlemen of the Jury exactly what you did upon seeing the boat?

A. At the time that we saw the boat Officer Walker and I, the boat was

stationary in the water and we decided that we would just routinely check it, we pulled up behind the boat and put a spotlight on the boat and came alongside and identified ourselves as Florida Marine Patrol Officers.

Q. How were you dressed?

A. In full uniform.

Q. What happened then?

A. We asked the gentlemen. . .

MR. JAMES: I have to object to 'what we did', I think I need to know what she did, what someone else did, I object to the use of the word 'we'.

THE COURT: Objection is sustained.

Q. Officer, who was with you at this particular time?

A. Officer Mark Walker, Florida Marine Patrol.

Q. Where was he located with respect to your person?

A. We were both together in the patrol boat, he was driving the boat and I was a passenger.

Q. Now, what did you do at that time, at the time you spotted the boat?

A. I put the spotlight on the boat, it was a large white boat with blue trim, obviously a fishing boat, it had wire fish traps all over it and a trap puller on the front, and as I said, we pulled alongside, identified ourselves as Florida Marine Patrol.

MR. JAMES: Objection to the use of the word 'we'.

THE COURT: Objection is overruled, she has identified who 'we' is. Go ahead.

MR. JAMES: Your Honor, the purpose of my obejction [sic] is sir, on hearsay she is going to say, 'we did something' when Walker did it.

THE COURT: There has been no hearsay at this point, your objection is overruled. Go ahead.

Q. What did you do?

A. I believe it was Officer Walker that said. . .

MR. JAMES: Objection as to what Officer Walker said.

Q. What did you do at that point?

A. I wasn't doing too much, Officer Walker was speaking, he is the senior officer on the boat and I was learning.

Q. Okay, tell us what happened during the course of events?

A. I have to speak what Officer Walker did, Officer Walker identified us as Marine Patrol.

MR. JAMES: Objection, it is a hearsay answer as to what Officer Walker said.

Q. Rather than tell us what Officer Walker said, you may tell us what Officer

did, what you witnessed him do or what you did or what you said?

A. I observed two men step out of the wheel house of the boat, one of them was a young man, one of them was an older man, slightly taller and we asked them, I didn't ask them, Officer Walker asked them.

MR. JAMES: Objection as to what Officer Walker asked.

THE COURT: Objection sustained.

Q. Were certain requests made of these two individuals?

A. Yes, sir, there were.

Q. Were those requests complied with?

A. Yes.

Q. Were they complied with to your satisfaction?

A. No.

Q. What did you do as a result of that?

A. I observed the man go back into the wheelhouse after he was requested to get registration papers for the boat.

MR. JAMES: Objection as to, move to strike the words, 'after they were requested', the answer based on hearsay on something was told.

THE COURT: Counsel approach the Bench.

Thereupon, Counsel for the State and the Defendant approached the Bench.

THE COURT: The whole thing about it is you haven't laid a predicate, he's making these objections, basically they are hearsay, some of them I don't know, I've never heard about hearsay as to, we are just going to be bogged down here if you don't get this thing on the right foot, that is why I called you up.

MR. FOWLER: I'm not sure what, obviously I'm having difficulty with this

witness.

MR. JAMES: Ask her what did you do.

MR. FOWLER: I've asked her that.

THE COURT: Well. . .

MR. FOWLER: I guess I'll keep trying.

Q. Officer Solly, after your initial request was not complied with, what happened?

A. I can tell you what happened in my own words, I mean, it's the best that I can do.

Q. Tell us what happened?

MR. JAMES: Objection to the narrative, Your Honor, I can't, it is possibly going to be a hearsay, I think the witness should be instructed.

THE COURT: The Court will instruct the witness, at this stage anyway, do not quote what somebody else other than yourself said.

A. I understand, Your Honor.

THE COURT: I'll allow you to go ahead.

A. The problem is I can't tell you what happened because I didn't speak most of this time, is it permissible for me to say that.

THE COURT: Mr. Fowler, maybe you better ask specific questions.

Q. Officer Solly, did you make a request of the individual, did someone on your boat make a request of the individuals on board the boat you were on?

A. Yes, my partner requested that...

Q. Okay, was that request complied with to your satisfaction?

A. Yes, Mr. Garcia or the younger man on the boat brought out an envelope of papers, I observed these papers, the request was for Florida registration papers and these could not be produced.

Q. What did you do?

A. A request was made to go aboard the boat, the gentlemen accepted this and helped me aboard the boat.

Q. What did you do once you got on board the boat?

A. Myself and the two gentlemen went into the cabin of the boat, we proceeded into the cabin of the boat, mattresses were askew, I was looking in the boat on a routine check for safety equipment, maybe to help him produce the papers, the Florida registration papers which we needed which were not produced up to this point.

Q. Did you at this time request of them the registration papers?

A. Yes, I said we needed to see the Florida registration papers, I needed to see the Florida registration papers.

Q. What did you do then?

A. I then asked them if there was any

seafood products on board.

Q. What was their answer?

A. The younger man answered my by saying, 'no, we're going now to Cay Sal Banks to fish and we have just been at Woodsy Niles for a day icing up, I assume he was icing up, whatever they were doing there, they were just going out to fish, I said, "I still would like to check your catch box".

Q. Did you subsequently do that?

A. Yes, sir, there was one small box in the back, in the stern of the boat, we proceeded towards that.

Q. Describe that box for us, please?

A. This box was approximately the size of the witness seat here, it had a wooden lid on it.

Q. Did you request permission?

A. Yes, I requested permission of the younger man if I could check this

box, he said, yes, I could, I lifted the lid.

Q. What did you find in there?

A. There was some rotten food in there, no ice whatsoever, which at this point seemed a little strange to me because they said...

MR. JAMES: Objection as to any conclusion or opinion of the witness.

THE COURT: Objection sustained.

A. I saw some rotten food there, no ice, and there was no seafood for me to check so I closed the lid and we proceeded to the front of the boat, I requested to check the front catch box at which point Mr. Garcia or the younger man said that he'd like to see a search warrant, he asked me if I had a search warrant and I said, "no, sir, I don't have a search warrant but I'd like to check your front catch box".

Q. What happened then?

A. He refused, at this point he kept asking me if I had a search warrant, I said, "No, sir, I would like to check the front catch box". Officer Walker upon hearing this request, I assume he heard the request, said, "You're under arrest...

MR. JAMES: I object to anything Officer Walker said.

THE COURT: Sustained.

MR. FOWLER: What did Officer Walker do?

A. I don't know how to word it.

Q. I withdraw the question. The individual you indicated as being the younger man on the boat that evening, do you see him located anywhere in this courtroom here today?

A. He looks slightly different, he's grown a moustache since I last saw him,

it appears to be Mr. Garcia, the man in the rust collored shirt.

MR. JAMES: I'll stipulate that she has identified Mr. Garcia.

Q. Do you see the other individual that was on the boat that evening located anywhere in this courtroom today?

A. It looks like Mr. Casal in the blue shirt as I remember seeing him.

Q. Will you indicate where he is seated in the courtroom?

A. Right next to Mr. Garcia, he looks pretty much like the man I saw.

Q. Well, does he look like the man you saw or is he the man you saw?

A. That looks like the man I saw that night with Mr. Garcia.

MR. FOWLER: Let the record reflect the witness has identified the Defendant Casal.

Q. After Mr. Garcia requested a

search warrant, what happened then?

A. Officer Walker placed the two men under arrest.

Q. And then what happened?

A. I myself had moved slightly away from them towards the front of the catch box, towards where the catch box was located in the front of the boat and after Officer Walker placed the men under arrest, I believe he placed the younger men under arrest for not having the correct papers on board the boat, the young man said....

MR. JAMES: Objection as to anything the young man said, there has been no proper predicate.

MR. FOWLER: I'll stipulate to Mr. James [sic] objection. Tell us what you all did not what he said. What did you do next?

A. I stood by the box, the next

reason that they were put under arrest is for what they said.

Q. Just what you did next in the course of being on the boat?

A. I watched Officer Walker call the two men over to him and read them their Miranda rights.

Q. Okay, then what happened? What physically transpired on the boat?

A. Mr. Garcia said there is marijuana on board.

MR. JAMES: Objection as to anything Mr. Garcia said.

Q. Just tell us what you did, what physically happened on the boat?

A. The two gentlemen went over to the catch box and lifted the blue lid up and then I held the blue lid like this as they lifted the white lid off the catch box...

Q. What if anything did you notice?

A. A very strong odor of Cannabis Sativa which is Marijuana, I saw big bales of Marijuana laying underneath the white catch box.

Q. Then what happened?

A. I verified to Officer Walker that what I believed to be Marijuana was definitely, the boat was loaded with it to the gills and that there is no question that that was what was aboard the boat.

Q. Will you describe how this Marijuana was packed inside the hold, what you suspected to be Marijuana was packed inside the boat?

A. They were large bale like packages, looked like a bale of hay, some of them were wrapped in plastic, some were wrapped in burlap and they were taped up, they were packed side by side, some of them were diagonal, they were packed as

tight as they could be, right from the top of the refrigerator box.

Q. Okay, then what did you do?

A. We replaced the two lids, Officer Walker was still in his patrol boat by the side of the boat and I placed Mr. Casal into the patrol boat with Officer Walker, Mr. Garcia was to take the boat back and I stayed with Mr. Garcia on board the boat with the Marijuana.

Q. What was the name of that boat?

A. The San Rafael, it was written in blue on the boat.

Q. You say that you were to stay on board the boat, what happened then?

A. Our station had been notified and we were told to escort the boat back.

MR. JAMES: Objection as to what they were told.

Q. What did you do?

A. We escorted the boat back to Key

West, I was with Mr. Garcia in the wheelhouse, keeping him under observation, Officer Walker had Mr. Casal in his boat, other officers came to the scene.

Q. Did you ever get off that boat on the way back?

A. At one point I did.

Q. Did anyone replace you?

A. Yes, Officer Eddie Melvin was put aboard my boat, the Marijuana boat that we were in.

MR. JAMES: Objection as to the use of the word Marijuana.

THE COURT: Sustained.

A. The large fishing boat that I was on with Mr. Garcia, Eddie Melvin took my place, I was temporary placed on board the patrol boat with Mr. Casal, the elderly man and Officer Walker, and then we transferred back as Officer Melvin was needed back in Key West faster than

the big boat was going to get there.

Q. So, then you again got back on the boat.

Q. It was less than four or five minutes that I was off the San Rafael and there was another officer on board with Garcia on the boat at the time.

Q. When did you next leave the San Rafael?

Q. After we reached the Coast Guard Station in Key West I stepped off the San Rafael at the dock.

Q. Officer, I ask you to step off the stand and observe A, B, C, D, for Identification and ask if you can identify them?

A. Yes, I can definitely identify this one, these are all the samples that myself and Sergeant Papp of the Monroe County Sheriff Department took from every ten bales.

Q. You took the samples yourself, is that correct?

A. I held the brown bags open for Sergeant Papp to scoop out the samples of Marijuana.

MR. JAMES: Objection to the use of Marijuana.

A. The samples of suspected Marijuana.

Q. I ask you now to inspect them to see if they are in the same condition they were in when you last saw them?

A. They appear to be, the numbers that I put on the left hand corner, this is my writing, this is my writing on which appears to be the same brown bag.

Q. As to State Exhibit B, C, and D for Identification, can you identify them?

A. Yes, these are all the same, the date and the time my signature and my identification number, these are the

same ones that I turned over to Lt. Valdes.

Q. Where did you come into possession of those particular bales?

A. Aboard the San Rafael.

Q. And where did you take the samples that are in the plastic bag?

A. Aboard the San Rafael, as each one one [sic] of the bales that we were going to ake [sic] a sample out of came out of the hold, we took the samples right there.

MR. FOWLER: Thank you, no further questions.

THE COURT: Cross-examination?

MR. JAMES: Your Honor, before my cross-examination, I would like to make a motion at the side bar.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. JAMES: I move to strike any

reference whatsoever where she used the word marijuana, I move to strike when she related as to what Garcia said and to instruct the Jury to disregard anything she said as to what Garcia said. I further move to strike the testimony of Garcia, quote, 'he refused to allow inspection of the hold.' That's my motion to strike.

THE COURT: On what grounds?

MR. JAMES: My motion to strike as to what Garcia said, thus far in this record there's no proper predicate and foundation as to allow anything that Garcia said.

THE COURT: The Court didn't rule on ...

MR. JAMES: I've got to move to strike, I'm objecting, that's all that I can do is to move to strike, you should have told him.

the court: I mean, the last one, I didn't rule on, I don't know what they did.

I objected, she kept saying and you didn't rule so I've got to move to strike.

THE COURT: Well, I want to be specific because some of them I agree with, I mean I'm not going to grant you to strike on everything where marijuana was used because just there at the end she said suspected marijuana.

MR. JAMES: Okay, I want every time she said marijuana without the use of the word suspect in front of it, I think I'm entitled to the motion to strike as to what Garcia supposedly said, when I objected she kept talking as to what he said.

MR. FOWLER: At which point?

MR. JAMES: About there being mari-

juana aboard the boat.

THE COURT: At that time she had already identified the Defendant as being there.

MR. JAMES: The record is still devoid of proper predicate of foundation of that statement coming in regardless that she identified him, the record must have a proper predicate, I also want to move to strike the testimony as to him refusing to allow inspection on the basis that any statement would prejudice the Jury, that he exercised his Constitutional Rights and I think that would prejudice the Jury, the fact that he didn't wouldn't allow them to search, so I'm moving to strike on that basis.

THE COURT: What says the State?

MR. FOWLER: Your Honor, as to his testimony, I can see his point as to the other, as to the last statement, that

should be admissible, he gave his consent.

THE COURT: He gave his consent, where?

MR. FOWLER: He gave his consent to look in the boat.

THE COURT: You're talking about the back fish box?

MR. FOWLER: Yes, sir.

THE COURT: Maybe I didn't hear it, I thought he consented for her to look in that particular box.

MR. JAMES: That is what I recall, a specific box.

MR. FOWLER: My recollection is, he gave consent.

THE COURT: I will grant your motion to strike the use of the word marijuana at the time it wasn't conditional where the word suspected was added, I don't know how many times that happened, this

takes care of your motion, as to the statement, I'm having trouble pinning it down exactly what the statement was, you're talking about the reference to the search warrant?

MR. JAMES: No, I'm talking about reference that there was marijuana on board.

THE COURT: I didn't hear it.

MR. JAMES: I was objecting and she kept talking about it.

THE COURT: I didn't even hear it, what was it that she heard.

MR. JAMES: Reference to Garcia saying there was marijuana aboard the vessel.

THE COURT: Are you arguing against that?

MR. FOWLER: Your Honor, I'm not arguing, it was not in response to a question, it was a spontaneous statement by the Defendant.

THE COURT: When did she say that, right after she said about the search warrant?

MR. JAMES: Yes.

THE COURT: Is that when it was?

MR. JAMES: Yes.

THE COURT: You want to respond to his argument?

MR. JAMES: No, I think there have been questions but I think they have to show the proper foundation, it hasn't been lay layed, it doesn't show a spontaneous declaration, this record doesn't show it as such, the record shows there was some question between the officer and the Defendant, they can't do that without a proper predicate.

THE COURT: What predicate are you talking about, their rights?

MR. JAMES: Yes.

THE COURT: As I recall, you correct

me if you remember differently, she started to say, "I'd like to look in the front fishbox, is that right?

MR. JAMES: I'm not contesting that.

THE COURT: And he said, 'do you have a search warrant.

MR. JAMES: That's correct.

THE COURT: As I said, I didn't hear that part, the other part of that statement that you moved to strike, was it right there?

MR. FOWLER: Yes.

THE COURT: That doesn't make sense to say, do you have a search warrant.

MR. JAMES: And she went on, she said she didn't but she still wanted to look at the fishbox.

THE COURT: I hadn't heard that.

MR. JAMES: And then she said it again and in response to that supposedly he answered about the grass, in response

to that request, in response to that question, it was the result of that question, in response to a specific question and request to look in the front fishbox.

THE COURT: Motion denied.

MR. JAMES: Okay, I also Your Honor, specifically when she was testifying he refused to allow inspection, I move to strike that testimony in reference to exercising his Constitutional Rights.

THE COURT: State wants to respond?

MR. FOWLER: Your Honor, I think it's not a question of exercising his Constitutional Rights, it is a question of having withdrawn consent previously made.

THE COURT: You're moving to strike her statement?

MR. JAMES: Yes, sir.

THE COURT: Is that what you want a jury instruction on?

MR. JAMES: Yes, sir, I sure do. Your Honor, the Third District Court of Appeal.

THE COURT: I know what you're talking about.

MR. JAMES: They say I've got to move to strike if you deny that or if you grant it, either way, I then move for a mistrial, they say I have to go through this procedure, I don't know what else but to follow what they say in the case, regardless whether I agree with it or not.

THE COURT: I'm going to deny it.

MR. JAMES: Okay, I now move for a mistrial based on the fact that the Jury has been prejudiced because of all the statements coming in, statement allegedly made by one of the Defendants as to exercise the Constitutional Right of one Defendant.

THE COURT: The State wish to...

MR. FOWLER: No, sir.

THE COURT: Motion for a mistrial is denied.

MR. JAMES: Your Honor, one second.

THE COURT: All right.

MR. JAMES: We have no questions at this time.

THE COURT: The witness may step down, State call your next witness.

MR. FOWLER: The State will call Mark Walker.

THEREUPON, MARK WALKER was called as a witness for the State and after being duly sowrn, testified sas [sic] follows:

DIRECT EXAMINATION BY MR. FOWLER:

Q. Will you state your name and occupation, please?

A. Mark Walker, I am employed by the Florida Marine Patrol.

Q. How long have you been so employed?

A. Approximately 8 years.

Q. Were you employed by the Florida Marine Patrol on the 18th of September of last year?

A. Yes, sir, I was.

Q. Did you have occasion to be on patrol in the early morning hours of that day?

A. Yes, sir.

Q. Anything unusual occurred in the early morning hours of that day?

A. Yes, sir, Officer Solly and I were on routine water patrol in the area from where we had gone out to Munson Island and were returning back towards Key West, this was on the night of the 17th which ran into the early morning hours of the 18th.

Q. Did you have occasion to come across a boat during your patrol in the early morning hours of that day?

A. Yes, sir.

Q. What was the name of that boat?

A. The name of that boat was the San Rafael.

Q. Will you tell the ladies and gentlemen of the Jury and the Court please, what you did upon approaching this particular boat?

A. Officer Solly and I were heading back towards Key West on the ocean side of the keys in Monroe County, we were off Sugar Loaf, we observed a boat which appeared to be sitting in the water, not moving, we stopped and we watched it for a few minutes, the boat appeared to get underway again, we went down a little ways past the boat and turned and come up from behind the boat, as we approached the boat, approximately 50 feet or so, I asked Officer Solly if she would turn the spotlight on to illuminate the boat,

when she turned the light on you could see the name of the boat, the San Rafael, it was a large commercial type boat with the wheel house [sic] on the back, it had a large number of fish traps on the forward deck, crawfish traps pulley mounted on the side of the boat or a trap-puller on the side of the boat. I came along side [sic] of the boat, I identified myself as a Marine Patrol Officer, I asked the Captain if he would stop his boat, we would like to check his papers.

Q. What happened then?

A. The Captain stopped the boat, I went around the bow of the boat, came up alongside of the boat, the Captain and the Mate, the two gentlemen that were in the boat come out to the side, I asked the Captain, I just stated, "Captain, I'd like to check your registration

papers, please".

Q. Did he produce such registration papers for you?

A. No, sir, he didn't.

Q. Is that the only request you made?

A. At that time that was the only request that I had made, I asked for the registration papers, and he showed me a tax receipt, a paid receipt for taxes and later he produced a document, documentation papers for the boat.

Q. Upon his failing to produce Florida registration for the boat, what if anything did you or anyone in your company do that you witnessed.

A. Due to the weather conditions out there which was a little rough for us to be alongside a large commercial boat with the patrol boat, Officer Solly asked to go aboard the boat to further check for the registration, permission

was asked from the captain to come aboard the boat, at which time the mate and Mr. Garcia was identified to us as he was the Captain, assisted her aboard the boat.

Q. What happened then that you observed?

A. Officer Solly went into the wheelhouse and cabin part of the boat, in a few minutes she appeared on the stern or the after part of the boat to the rear door of the wheelhouse along with Mr. Garcia, Officer Solly opened a wooden box approximately 3 ft. long, 1 1/2 ft. wide, she raised the lid on this, looked inside of it, she told me that...

MR. JAMES: Objection to what she told him.

THE COURT: Sustained.

Q. Rather than what she told you,

what happened then?

A. She went back into the wheelhouse part of the boat, she appeared out on the forward part, in front of the wheelhouse in the forward part of the boat.

Q. What happened then?

A. Conversation between Officer Solly and Mr. Garcia.

Q. And then?

A. And Mr. Garcia asked if we had a search warrant at which time I replied that we did not have a search warrant, that we did not need a search warrant, that we were not searching the boat, that he was under arrest for failure to carry his registration.

Q. And what did you do then? What happened next?

A. Mr. Garcia said that there was no...

MR. JAMES: Objection to anything

that Mr. Garcia said on behalf of Mr. Casal as being a hearsay objection, objection on behalf of both Defendants as to improper predicate and foundation thus far to permit any statement made at this time by Mr. Garcia.

THE COURT: What says the State?

MR. FOWLER: Your Honor, as to Mr. James's hearsay objection, both individuals were there and the statement applies only to the individual who made it therefore the other individual would lack, certainly to object since the statement does not apply to him.

THE COURT: That objection is overruled.

MR. JAMES: There is improper foundation and predicate in this record to admit any statement made at this point and time.

THE COURT: Objection sustained.

Q. Did you attempt in any way at that point to illicit any response from Mr. Garcia after you informed him that he was under arrest?

A. No, sir.

Q. What if anything did Mr. Garcia say?

MR. JAMES: Objection. I'd like to voir dire with this witness briefly before we get into that, as to the attempted predicate, foundation layed [sic] by the State.

THE COURT: Go ahead.

BY MR. JAMES:

Q. Was not the, you weren't questioning the Defendant at any time, wasn't the conversation taking place between Agent Solly and the Defendant Garcia?

A. I didn't say what all their conversation...

Q. I didn't ask you that, I'm asking you, isn't it true that Officer Solly and Defendant Garcia were up in a large commercial vessel which you were some feet away, at the time this statement was allegedly made, correct?

A. Yes, sir, I was a few feet off the side of the boat.

Q. And were they not conversations, I'm not worried about what they were saying but at that time when you overheard the statement, right?

A. Yes, sir.

Q. And at the time the statement was made and just prior to that time, were there not conversations going on between Agent Solly and Defendant Garcia?

A. Yes, sir.

Q. And didn't you just overhear the statement that Defendant Garcia was making allegedly to Agent Solly at that

time?

A. I don't know whether Mr. Garcia was replying to me or to Officer Solly.

Q. That statement was made in reply to perhaps to the statement that you had made, correct?

A. I don't quite follow you, Mr. James.

Q. It was made perhaps in reply to statements you made or perhaps in response to questions that Agent Solly had made, is that not correct?

A. Yes, sir.

Q. At the time that you overheard the statement, was the motor running on the big boat?

A. Yes, sir.

Q. Was the motor running on your boat?

A. Yes, sir.

Q. Were you standing in the middle

of your boat?

A. No, sir.

Q. You were just holding on to the side?

A. No, sir.

Q. Then what were you doing?

A. I was laying along side [sic] on the leeward side of their boat.

Q. And you were just drifting along in the rough waters calmly?

A. I wouldn't say I was drifting along calmly, the big boat made, where it was as big as what it was compared to my boat, made more of a shelter for my boat, I was on the lee side where the water was not quite as rough as it would have been on the other side of the boat.

MR. JAMES: That is the end of my voir dire with this witness as to the foundation attempted to be layed [sic] by the State. I renew my objection to any

statement.

THE COURT: Objection sustained.

BY MR. FOWLER:

Q. Officer Walker, what did you do next? After you placed Mr. Garcia under arrest, what did you do next?

A. I maneuvered my boat, then I put my boat close along by Mr. Garcia's boat, I asked Mr. Garcia and the mate, both gentlemen to come over to the side of the boat.

Q. Then what did you do?

A. I advised them of their rights.

Q. And what rights did you advise them of?

A. Of the Miranda rights.

Q. And how did you do that?

A. From the card that I have in my billfold.

Q. Do you have the card with you?

A. Yes, sir, I do.

Q. Will you indicate to the Court please and the ladies and gentlemen of the Jury how you advised the individuals of their rights that evening?

A. Yes, sir, with my boat laying along side [sic] of theirs, my hand on the fender of the boat to keep the boats apart, Mr. Casal, I believe was the mate holding the windshield apart of my boat with the spotlight laying on the dash of my boat which is like a small desk, I brought out my Miranda card, I advised them they had the right to remain silent; anything you say can and will be used against you in a court of law; you have the right to talk to a lawyer and have him present while you're being questioned; if you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish; you can decide at any time to exercise these

rights and not answer any questions or make any statements, and I asked them if they understood their rights, Mr. Garcia acknowledged that he understood his rights.

Q. Did you ask Mr. Garcia any questions at that point?

A. Yes, sir, I asked him what was on the boat, he replied, marijuana.

Q. Did he give you any indications of how much marijuana was on the boat?

A. No, sir, I asked him if he had any idea how many bales or how many pounds were on the boat and he replied, 'no'.

MR. JAMES: On behalf of Defendant Casal, I would rise to to [sic] object as to any statements made by Garcia on the basis of hearsay, on the basis of improper foundation and predicate, and three, it's improper in a trial

involving Mr. Casal to have a statement by an alleged codefendant.

THE COURT: Objection overruled.

Q. What did you ask Mr. Garcia?

A. What he had aboard.

Q. And his response?

A. Marijuana.

Q. Did he give you any indication of how much?

A. No sir, he advised he didn't know how much.

Q. What did you ask him concerning that?

A. I asked him if he knew how many bales were aboard and he replied he didn't know, I aksed him how many pounds he might have on baord [sic] and he replied he didn't know.

Q. Officer Walker, the individuals that you indicated to us previously, Mr. Casal and Mr. Garcia, do you see

Mr. Garcia located anywhere in this courtroom today?

A. The man with the orange shirt with Mr. James is Omar Garcia.

Q. Let the record reflect the witness has identified the Defendant, Omar Garcia. Do you see the individual that you indicated as being Mr. Casal located anywhere in this courtroom here today?

A. Yes, sir, he's sitting next to Mr. Garcia with a blue shirt.

Q. Let the record reflect the witness has identified Mr. Casal. Officer Walker, where was the San Rafael when you first stopped it?

A. I would estimate the Nine foot shoal marker which is off Sugar Loaf, it is approximately 2 miles off shore [sic], the San Rafael was just in the proximity of being right in the same distance off shore [sic] of what the Nine foot shoar

[sic] marker would be, 2 1/4 miles.

Q. Which side of the Nine foot shoal marker was the San Rafael?

A. If any, it was just a little outside of the 2 1/4 mile side, it couldn't be too much further because it's shallow shoals on the other side of it.

Q. You say they were the waters of Monroe County?

A. Yes, sir.

Q. What did you do after placing Mr. Garcia under arrest and Mr. Casal?

A. I asked Mr. Garcia if he would assist Officer Solly to confirm the statement that he had just made to me, reference to the marijuana and open up the forward hatch, Mr. Casal and Mr. Garcia went up to the forward part of the boat, they moved several fishtraps off the top of the hatch cover and assisted Officer Solly open up the hatch.

Q. And then what happened?

A. The hatch was opened up, there was a strong odor that emitted from the hatch being opened which was similar to me as that of being marijuana from previous experience.

Q. Then what did you do?

A. I asked Officer Solly to stay aboard the boat with Mr. Garcia, I asked him to run his boat in, I put Mr. Casal in the boat with me, and I told him that we would be heading back towards Key West at which time he got his boat underway and we started back towards Key West.

Q. Okay, what happened next?

A. As we were going in, I notified the Monroe County Sheriff Department by radio to get in touch with my supervisor, Captain Little, I had the Sheriff Department make contact by telephone

with two marine partol officers and advised them to come up on the radio or get underway with another boat to come out to assist me.

Q. Did they in fact do that?

A. Yes, sir, they did. Officer Melvin and Officer Dedelman came out in the boat, they met me off Geiger Key, just off the Boca Chica beach.

Q. What if anything happened when they came out?

A. When they came out, seeing that Officer Solly was what we call a rookie officer, she was inexperienced very much, I decided it was best to put Officer Melvin aboard the boat with Mr. Garcia, I put Officer Solly in the boat with me.

Q. And then what happened?

A. My supervisor came on the radio and requested that Officer Melvin...

MR. JAMES: Objection to anything the

supervisor requested.

Q. Just say what happened?

A. Officer Melvin was taken back into the Coast Guard dock where his boat is kept, he is the Captain on our 53 ft. boat, they wanted him to get underway to go out and possibly check for any other boats out there, at which time Mr. Casal was put in the boat with Officer Needleman, as I carried Officer Melvin in, Officer Solly was put back aboard the San Rafael, at which they stayed that way and we went into port with them, to the Coast Guard Station in Key West.

Q. What if anything did you discover or find or who did you find when you got into port here?

A. Captain Little was on the docks with the Sheriff Department, Detective Joe Valdes, there was Sgt. Papp and several other people, I don't remember

exactly who all was there.

Q. MR. FOWLER: Thank you, I have no further questions.

THE COURT: Cross-examination.

THEREUPON, CROSS-EXAMINATION BY MR. JAMES:

Q. At what time of day did you first see this vessel?

Q. Approaching the midnight hour on into the early morning hour, past midnight of September 17th going into the morning of the 18th.

Q. What were your duty hours the 17th of September?

A. I was working the 3:00 P.M. to midnight shift.

Q. You were due to get off at midnight?

A. Yes, sir.

Q. And, when was the first time you observed this vessel, the San Rafael,

what time?

A. A few minutes before midnight into a few minutes after midnight.

Q. Were you heading back towards Key West?

A. Yes, sir, I was.

Q. About how far in time were you, where were you going to dock?

A. Garrison Bight.

Q. How far away were you from Garrison Bight in your patrol boat?

A. In miles? about 30 minutes

Q. Time?

A. 30 minutes.

Q. Okay, so you were going to work overtime that night?

A. If it required, yes, sir, I don't work specifically by the clock.

Q. And, what time was it when you saw these Defendants in possession of this alleged marijuana?

A. Sometime after midnight, between twelve and one o'clock, I could say exactly.

Q. Any reason why you couldn't tell us exactly what time, did you have a watch?

A. Yes, sir.

Q. Did you observe your watch?

A. I had earlier, yes, sir, but I hadn't after the checking of the papers and the boarding of the boat and everything, I hadn't paid that much attention to the time.

Q. What time was it the last time that you recall checking your watch?

Q. About twenty-five after twelve.

Q. About twenty-five after twelve?

A. Was the lat time I recall seeing my watch.

Q. Where exactly was this vessel when you observed it?

A. It was on the ocean side of Sugar Loaf Key, in the vicinity of the Nine Foot Shoal marker, right off Sugar Loaf Key.

Q. That's on the ocean side of Monroe County?

A. Yes, sir.

Q. Where does Monroe County end on the ocean side, I'm not talking about jurisdiction, I just want to know where the boundary is?

A. Monroe County?

Q. Yes.

A. In that particular area, Maryland Shoal which is on the reef line protrudes out of the water on a high tide taking a three mile radius from Sugar Loaf with the arch and the arch from the three mile, the three mile arch from Maryland Shoal, Pelican Shoal would give you six miles approximately in that vicinity.

Q. What I'm saying is, if you understood my question, I just want to know where the boundary of Monroe County is, I don't care about the three miles of jurisdiction, doesn't the jurisdiction of the State of Florida actualy [sic] extend three miles ocean side from its boundary?

A. From the nearest point of land providing of those three miles, if there in another body of land that sticks out of the water on mean high water you take a three mile arch from that body of land that comes out of the water.

Q. Isn't it not true that the boundary finally ends some place and the State has three more miles of jurisdiction, right?

A. Yes, sir.

Q. Okay now, and this I'm asking on behalf of Defendant Casal, will you look

at this chart and show me where the boundary is and mark it. Not the jurisdiction now, where the boundary is?

A. I'm not a navigator, I couldn't mark on the chart exactly where the three mile mark is on the chart, sir, I'm not a qualified navigator.

MR. FOWLER: Your Honor, does Mr. James wish to introduce this as an exhibit?

MR. JAMES: On behalf of Defendant Casal, yes, I ask that it be so marked Your Honor, by stipulation it would be admitted into evidence on behalf of Defendant Casal.

THE COURT: Is the State stipulating? to this?

MR. FOWLER: No, sir...

MR. JAMES: On behalf of, I think I'm allowed to use it to impeach the testimony of this witness

THE COURT: Motion to admit it into evidence is denied.

MR. JAMES: Your Honor, I would ask on behalf of Defendant Casal that this Exhibit be marked for Identification solely for impeachment purposes.

THE COURT: You can have it marked for Identification, Defendant's Exhibit A for Identification.

MR. JAMES: For Defendant Casal.

THE COURT: All right.

Thereupon, chart marked for Identification for Defendant Casal as Defendant Exhibit A.

Q. Did you have any navigational equipment out there that night?

A. Only a compass.

Q. Did you have any other navigational equipment other than a compass?

A. No, sir.

Q. Did you have a chart?

A. No, sir.

Q. You had no chart?

A. No, sir.

Q. All you had was a compass, right?

A. Yes, sir.

Q. Looking at this chart, can you tell me where Nine Foot Shoal light is?

A. Right here. (indicating on chart)

Q. Now, on this chart, can you tell me where the boundary of Monroe County is, where Monroe County stops?

A. Yes, sir, right here. (indicating on chart)

Q. Will you please take a pen and mark where the line and draw me the line where Monroe County stops on this chart?

A. How would you want me to mark it, Mr. James, just an x on it?

Q. Kind of draw an a and a B, two ends.

A. A and B.

Q. And this line as its [sic] coming that you've marked A on one end and B on the other is the...

A. This is what I reference to as the three mile arch, from here and from this point of land. American Shoals is just outside of Florida waters.

Q. American Shoals is just outside, now this line, is not that the line where the three mile limit, the three mile jurisdiction is?

A. That is Monroe County.

Q. I'm asking you, isn't this line three miles from the boundary, isn't the boundary of Monroe County actually three miles inside?

A. No, sir.

Q. It's not?

A. Not in the chart that I've worked with, they are not.

Q. You realize the difference I'm

talking about, where you have the three mile jurisdiction on from your ocean side boundary, do you realize the difference that I'm getting at, I just want to make sure.

A. No, sir, I'm not really sure.

Q. Okay, you are familiar are you not, as you testified that the State of Florida has jurisdiction three miles to the ocean side from their boundary, right?

A. Yes, sir.

Q. Okay, so where Florida ends, if it ends right here, (indicating on chart), it still has jurisdiction three more miles out, right?

A. No, sir.

Q. We don't have?

A. Not unless there is a point of land at that other three mile mark.

Q. Isn't it that you've got juris-

diction three miles out from your furthest point of land?

A. Yes, sir.

Q. And where is your point of land, isn't that found where your boundary is?

A. No, sir, the furtherist [sic] point of land would be Pelican Shoal or Maryland Shoal because you're taking your three miles and the nearest point of land would be Pelican Shoal or Maryland Shoal.

MR. FOWLER: Your Honor, May we approach the Bench.

THE COURT: Yes, sir.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. FOWLER: Your Honor, if Mr. James wishes to attack the jurisdiction of this Court, I don't think this is the proper time to do it.

MR. JAMES: No, I'm attacking the

venue, I've got to get to where the boundary of Monroe County is, I'm attacking the venue not the jurisdiction.

THE COURT: What are you saying?

MR. FOWLER: So far I haven't heard anything about venue, all I've heard is jurisdiction. What I'm saying, if it's an attack on jurisdiction this is not the palce [sic].

THE COURT: To be honest with you, you confuse the Court the way you're talking, I think I'm following you but I don't think this witness is quite capable of telling you, unless you're atalking [sic] about jurisdiction.

MR. JAMES: This witness is the one that's testifying in Monroe County, Florida Monroe County [sic], Florida, so therefore I ha ve [sic] to attack him.

THE COURT: He told you where it is, he put a mark on there as to where it is,

didn't he?

MR. JAMES: The three mile mark,

THE COURT: Didn't he put a mark on there as to where this occurred?

MR. JAMES: No, sir.

THE COURT: But he told you where?

MR. JAMES: He told me.

THE COURT: Frankly, I don't think this witness can go into, you are getting into questions of law, now.

MR. JAMES: No, sir, I'm getting into, he says it happened in Monroe County, Florida, fine, I'm asking does he know where Monroe County is, where does it state [sic] and where does it end.

THE COURT: When it comes to jurisdiction, I mean, you can, the State's statements are well taken by the Court, if you're establishing where it was, the Court will decide whether there's jurisdiction or not.

MR. JAMES: No, sir.

THE COURT: As to venue...

MR. JAMES: Venue must be alleged and proven, that's what I'm going after, if it did not occur within the boundary of Monroe County, Florida/ [sic]

THE COURT: That's what I'm saying, I thought you had had him pinpoint on that map the area where this occurred.

MR. JAMES: No, sir, he did not mark it.

THE COURT: He told you, now you're having him mark boundaries apparently over a distant as to the boundaries of Monroe County, I mean, if you took that Federal decision, laying that out, you'd have to work hard to do that, this witness can't do that, I don't disagree with you to, you're perfectly entitled to establish where it occurred.

MR. JAMES: Right.

THE COURT: As to the question of whether it is or is not within Monroe County, I don't think you've established that, obviously, you're in the belief it is.

MR. JAMES: Sir, I'm entitled to go into the reasonableness as believed.

THE COURT: I don't know what the State is saying.

MR. FOWLER: I don't know what Mr. James is doing, frankly.

BY MR. JAMES:

Q. Mr. Walker, you're aware of the dimensions of Monroe County, where it starts and where it stops.

A. On the ocean side we have 3 miles from the nearest point of land unless such land encompasses an area that if you pick up, if you have 2 islands, say, Loggerhead Key which is off Sugar Loaf and Summerland Key, from Loggerhead Key,

if there was another island sitting out there that was 4 miles, you take the 3 mile arch from Loggerhead Key, from the southernmost point out, you take this island over here that is above mean high water on high tide on mean high water, it still protrudes above the water, at that point, you can take a three mile arch all the way around this point of land above this point off shore which would enclose a larger area.

Q. In your opinion all that would be Monroe County, Right [sic]?

A. Yes, sir, if I arrest somebody in that area, it's returnable to the courts of Monroe County, Florida.

Q. Because it occurred within the boundaries of Monroe County, right?

A. Yes, sir.

MR. JAMES: I have no further questions.

REDIRECT EXAMINATION BY MR. FOWLER:

Q. Officer Walker, did you receive any indication from where this boat had originated, the San Rafael?

A. Yes, sir, when we stopped the boat inquiring about the registration, I asked Mr. Garcia where he fished out of, he said he had been fishing out of Miami, that he had moved to Woodsy Niles and he had fished out of there for one day.

Q. That was the day you stopped him?

A. Yes, sir.

Q. Where is Woodsy Niles's Fish House located?

A. It's on the southeast end of Stock Island, it would be on the east end of Stock Island on the ocean side in Monroe County.

Q. What was the closest county to the point at which you stopped the San

Rafael?

A. Monroe County.

MR. FOWLER: No further questions.

THE COURT: Recross?

THEREUPON, RECROSS EXAMINATION BY MR. JAMES:

Q. Nine foot shoal you say is 2 1/4 miles from the nearest point of land...

MR. FOWLER: You Honor, I'm going to object, my redirect examination tof [sic] Officer Walker did not mention anything about Nine foot shoals and didn't remotely refer to it.

THE COURT: Objection sustained.

MR. JAMES: I then ask the Court to hold Officer Walker, I intend to call him as a witness on behalf of one of my Defendants.

THE COURT: The witness may step down. Call your next witness.

MR. FOWLER: The State will call Eddie

Melvin.

THEREUPON, EDDIE MELVIN was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FOWLER:

Q. State your name and occupation, please?

A. Eddie Melvin, I am a Marine Patrol Officer.

Q. How long have you been so employed?

A. Approximately 5 years.

Q. Were you employed by them on the 18th of September of last year?

A. Yes, sir.

Q. Did you have occasion to answer a call in the early morning hours of that day?

A. Yes, I did.

Q. Will you tell us briefly what you did concerning your involvement with

that particular answer?

A. Officer Needleman picked me up, we proceeded out to where the boat was.

Q. Which boat was that?

A. The San Rafael.

Q. What did you do once you got there?

A. I went aboard the boat, Officer Solly came off at that time and she was off maybe five minutes, she came back and I got off the San Rafael and went back to oneof [sic] our other patrol boats.

Q. During the period of time that you were on the San Rafael, was anything on that boat disturbed or changed or otherwise altered?

A. No, sir.

MR. FOWLER: Thank you.

THE COURT: Cross-examination?

MR. JAMES: No cross examination.

THE COURT: Thank you, you may step down.

MR. FOWLER: The case will call Carl Schlocher.

THEREUPON, CARL SCHLOCHER was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

THE COURT: Mr. James, you [sic] assistant went out the door with an exhibit.

MR. JAMES: My exhibit, I withdraw it, it is my exhibit, I offered it for identification, it is not in evidence, I withdraw the exhibit at this time.

THE COURT: The Exhibit filed for Identification is supposed to remain with the Clerk.

MR. JAMES: I'll call and have it returned, if the Court wishes.

THE COURT: It's already outside of

this court.

MR. JAMES: Yes, sir.

BY MR. FOWLER:

Q. Will you state your name and occupation, please?

A. Carl Joseph Schlocher, Florida Marine Patrol Officer.

Q. How long have you been with the Florida Marine Patrol?

A. 7 1/2 years.

Q. Were you so employed on the 18th of September of last year?

A. Yes, sir.

Q. Did you have occasion to answer a summon in the morning hours of that day?

A. Yes, I did.

Q. Will you tell us what you did with regard to that call?

A. It was approximately one o'clock in the morning of the 18th, I received

a call from Captain Little to meet him down at the Coast Guard Station and standby [sic] there.

Q. Did you do that?

A. Yes, I did.

Q. And what subsequently happened?

A. Eventually the San Rafael was brought in, and I stood watch on it until eight o'clock that morning when we started unloading.

Q. Will you describe please the condition of the San Rafael when you saw it?

A. Counselor, what do you mean by the condition?

Q. Did you notice anything unusual about it?

A. Well, when I boarded it I could smell an odor which appeared to be marijuana.

Q. Subsequent to that, did you have an opportunity to witness anything

happening concerning the cargo of that particular boat?

A. No, sir.

Q. During that morning?

A. That morning, yes, sir, did something happen to the cargo of that particular boat that you were a participant?

A. Yes, the police started unloading the cargo at approximately nine o'clock in the morning.

Q. And what was your particular function in the unloading process?

A. I numbered the bales as they were brought out of the hold, set on the dock and they were numbered at that time.

Q. I ask you to step down Officer to step down from the stand and view what is marked as State B, C, D, for Identification and ask if you can identify them?

A. Yes, sir.

Q. And how is it athat [sic] you identify those items?

A. By the numbers that were painted on the outside of those three bales, that is apray [sic] paint that was used to amark [sic].

Q. Did you in fact spray that on yourself?

A. Yes, sir.

Q. From where did those bales come?

A. They came from the San Rafael off the hold.

Q. Did you also in the course of numbering the bales that came off the San Rafael, how many of them did you number, Officer Schlocher?

A. 421.

MR. FOWLER: Thank you sir.

MR. JAMES: I have no questions.

MR. FOWLER: The State will call Joseph Valdes.

THEREUPON, JOSEPH VALDES was called as a witness for the State, and after being duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

Q. Would you state your name and occupation, please?

A. Joseph A. Valdes, Jr., I'm a detective lieutenant Monroe County Sheriff's Department.

Q. And, how long have you been with the Sheriff's Department?

A. Ten years.

Q. Were you employed by them on the 18th of September of last year?

A. Yes, I was.

Q. Did you have occasion in the early morning hours of that day to be summoned to the Coast Guard Base?

A. Yes sir, I was.

Q. Would you describe to the Court, and these ladies and gentlemen of the

jury what your function was concerning that particular incident?

A. I was asked to come to the Coast Guard Station early that morning to assist the Marine Patrol. The dispatcher reported to me at that time that it was requested that my presence be made at the Coast Guard Station to assist them with a drug investigation. I arriaved at the Coast Guard Station and waited until approximately 3:15 in the morning when a commercial-type lobster fishing boat arrived at the dock and the name of the boat was the San Rafael.

Q. Did anyone else arrive with the San Rafael?

A. Yes.

Q. Who was that?

A. Marine Patrol Agents, Jenna Solly and Mark Walker. During this time, I met with--while I was there, just pre-

ceeding that, I met with Marine Patrol Agent Carl Scholgl [sic] who was also standing by to assist in this investigation.

Q. Okay. When Officers Solly and Walker came in, was anyone in their company?

A. Yes.

Q. Do you see those individuals located anywhere in this Courtroom?

A. Yes sir, I do.

Q. Would you identify them to the Court, please, by where they are sitting and what they are wearing?

A. The two Defendants sitting to the left of their attorney, Manny James. The Defendant with the red shirt was present and the Defendant in the blue shirt was also present.

Q. Did you come to know either one of their names?

A. Yes.

Q. Would you name each Defendant, again by what he's wearing, please.

A. Yes. The Defendant with the red shirt is Omar Garcia and the Defendant with the blue shirt is Constantino Casal.

Q. What did you do when the boat came in?

A. Alright, in connection with assisting the Marine Patrol, once they tied up the boat and completed their maneuvers in docking the boat, and they removed the Defendants from the boats and they were allowed to gather some of their possessions from the San Rafael, I then talked with both of the Defendants. Preceeding this, I determined that one was able to speak and understand the English language which was Omar Garcia and the other Defendant, I determined from speaking with him, could only

understand and speak Spanish.

In connection with talking to these two suspects at that time, first, I talked with Casal. I advised him first of his constitutional rights. I advised him of his rights in Spanish and...

Q. What rights did you advise him of?

A. I advised him that he had the right to remain silent. I advised him that anything or any statements that he made to me could be used against him in a Court of law. I advised him that he had the right to have his attorney present with him during the time that I questioned him and during all phases of the questioning and that if he could not afford to hire an attorney, that the State of Florida would appoint one to represent him and that the State would appoint such an attorney to represent him

prior to me or him answering any questions. He indicated to me that he understood those rights.

Q. And what did Mr. Casal tell you, if anything, regarding...

MR. JAMES: Objection on behalf of Defendant Garcia as to anything Casal may have said at this time. Improper predicate, improper foundation and improperly admitted in a joint trial of the Defendants.

THE COURT: Objection overruled.

Q. What did Mr. Casal say concerning himself in this particular regard?

A. I questioned him in connection with the suspected marijuana which was aboard the San Rafael. He stated to me that he knew that the marijuana was on board the San Rafael.

Q. Officer Valdes, what other function did you have in reference to this

particular case?

A. In connection with this case, I assisted the Marine patrol in performing the necessary preliminary field test and pursuant to that, I returned to the docks with the officers and assisted in removing the suspected bales of marijuana from the boat.

Q. Did you have occasion to come into custody of any of those particular items at any time?

A. Yes sir. After we removed the bales of marijuana from the vessel and we sampled every tenth bale. From every tenth bale we withdrew a sample of the vegetable material that was contained in every tenth bale and we removed approximately 421 bales from the vessel. Each bale was individually weighed and pursuant to removing all of the bales of suspected marijuana from the San Rafael,

I took three of the bales which were numbered 1 and 2 and 248, respectfully [sic], and we removed them to set them aside to be held as evidence.

Q. Did you at any time take scustody [sic] of the three bales?

A. I allowed Agents Walker and Solly to transport those three bales in my presence in their unit, patrol unit to the Sheriff's Department and maintained control of the samples that were taken from every tenth bale. We then, together, returned to the Sheriff's Department and they were submitted in my personal care, custody and control. After I receipted the suspected bales of marijuana, I locked them in a locker here at the Sheriff's Department and they remained tin [sic] that locker, sealed, until they were transported to the crime laboratory upstairs on the

second floor from where they were originally kept overnight and at three o'clock in the afternoon, the following morning I submitted them to Norman Lee our Criminalist in our crime laboratory to be analyzed.

Q. You said you stored the bales overnight somewhere. Where is it that you stored them overnight, Officer Valdes?

A. That particular night they were stored in the photolab room.

Q. What condition were the bales in when you stored them that evening?

A. The bales were wrapped and they were sealed and initialled for identification and when I went back into that room the following day to submit them to Norman Lee in the Crime Laboratory, they were in the exact condition.

Q. Had they been tampered with in

any way?

A. No sir.

Q. Det. Valdes, I would ask you, with the Court's permission to step off the stand view State's Exhibits A, B, C and D for identification.

A. In connection with State's Exhibit marked A-4, I can identify this as one of the bales that was transported and submitted to me and subsequently transported to the Crime Laboratory by our case number, my initials.

Q. Okay. What is the number on that particular bale?

A. I can't tell because of the scraping--it's scraped and the spray paint is coming off of it.

Q. Can you identify this as one of the three bales you submitted to Mr. Lee?

A. Yes sir because it has the case number and my initials on it.

Q. As to these other two?

A. Identify this bale because it also has the same number of the investigation and my initials and again the spray paint on this particular bale has deteriorated where I can't make out what it says.

Q. As for...

A. ... this exhibit marked A-2. I can identify the exhibit marked State for Identification A-3 because again it has the case number and again it has my initials. And, State exhibit for identification marked A-1, a plastic bag which has samples in it. Again, I can identify the bags which have the case number of the investigation and my initials.

Q. Are those, in fact, the same bags you submitted to Norman Lee on the afternoon of the 19th?

A. Yes sir.

MR. FOWLER: Thank you, I have no further questions of this witness.

THEREUPON, CROSS EXAMINATION BY MR. JAMES:

Q. Detective, would you come back over by thebags [sic], please. When you first saw that, take this exhibit, when you first saw that, what time was it?

A. When I first saw these bales at all it was approximately 3:15 in the morning.

Q. Okay. And what did you affix to those bales, if anything?

A. At that particular time?

Q. Yes. At any time. Starting then. From then to now.

A. Well, at the time that the bales were removed from the boat, I put my initials and the case number assigned to the investigation.

Q. Show me what do you mean by that, right there on the side?

A. Right here. (indicating)

Q. Written in red?

A. Yes.

Q. Case number and you [sic] initials?

A. Yes, sir.

Q. What else did you afix [sic] to that bale if anything?

A. Just my initials.

Q. Did you afix [sic] any type of seals to the bales?

A. No, sir, they were wrapped and they were sealed already with master tape.

Q. You, yourself at the time you had these three bales brought to the Sheriff's Office, you didn't look into the contents of those bales, did you?

A. No, sir.

Q. So when you testified that you

recognize this bale, is it not true what you're actually testifying to, you're identifying this outside plastic bag wrap.

A. I'm identifying the bale which is exactly as it appeared when it was removed from the boat which I can identify with the case number that we assigned to the investigation and my initials that I can idenitfy [sic], the only bales that were open and samples withdrawn, random samples was every ten bales.

Q. Let's say this bale, what's inside this plastic wrapping, what was in it when you took it out, when you took it out from the San Rafael, what's in here, what is on the other side of this plastic, white plastic container?

A. I don't know, our chemist will have to tell you that.

Q. I'm not saying the exact composi-

tion, I want to know if you know what kind of box because you didn't look in there?

A. No, sir.

Q. And so you don't know if this same box is in here now that was in there the day you took it from the boat, do you?

A. I testified that when we received those bales they were completely sealed and with the exception of every tenth bale which we removed the vegetable material from, with the exception of those, no other bales were open, the rest remained sealed and they were submitted sealed to the Monroe County Crime Laboratory.

Q. Okay, and when you submitted them sealed, at the time you submitted them you didn't know what was in there, right, you didn't know what kind of box or

packages inside that white plastic, right?

A. I can't identify the vegetable material, I'm not a chemist.

Q. Right, and you can't identify whatever kind of box is inside this plastic wrapping, can you?

A. This particular one?

Q. Yes, this particular one?

A. No, sir, I can't.

Q. You can't tell me that the same box is inside there now that was inside there September 18th, can you?

A. I can state that that is the bale that came off the boat which we removed on that morning because I can identify it with my case number and my initials.

Q. Can you tell me the contents of the same?

A. No, sir, I'm not a chemist, I didn't attempt to open the bale.

Q. I'm not saying what it is, I'm

just saying that you can't tell me now that the contents of that, that are inside that white plastic wrapping are the same contents that were there on September 18th, 1977, regardless what they were or were not, right?

A. Sir, I can testify that all the bales were similar one to the other and that every tenth bale was sampled and we ran field tests on the ones that we sampled and we received a positive reaction for suspected marijuana.

Q. That isn't what I've asked, Lieutenant, did you ud [sic] understand my question? All I've reference to is this one specific package.

A. I can only testify that that package was submitted to the Monroe County Crime Laboratory in the exact condition as I see it now, to the best of my knowledge.

Q. You storaged that overnight in a photo lab, is that correct?

A. Yes, sir.

Q. And who has access to that photo lab?

A. The only two people that have keys to the photo lab are...

Q. I'm talking about September 18, 1977?

A. With the exception of myself is Detective Lieutenant Conradi.

Q. Those were the only two on September 18, 1977, that had keys to the photo lab?

A. To my knowledge, yes, sir.

Q. Where is the photo lab located?

A. The photo lab is located in the old section of the building which is behind this building, located through a steel bar door and three other doors to get to the photo lab and it's located

directly, next to the detective's offices in the corridor between the record section and the detective division.

MR. JAMES: Thank you, I have no further questions.

THE COURT: Any redirect?

MR. FOWLER: No, sir.

THE COURT: Ladies and gentlemen, we are going to stop here for today, without me going all over it, I remind you what I said about exposure outside the courtroom on anything connected with this case, it is a great temptation to go home and talk about it, listen to the news and that sort of thing, please control it and follow the instructions on that. We will recess for the night and start in the morning at nine-thirty.

Thereupon, Court recessed and reconvened the following morning, September 21, 1978.

THE COURT: Following the overnight recess, the Court calls case 77-853 CF, State of Florida versus Constantino Casal and Omar Garcia. Is the State ready to proceed?

MR. FOWLER: Yes, sir.

THE COURT: Is Defense ready to proceed?

MR. JAMES: Yes, sir.

THE COURT: Bring the Jury in, please.

Thereupon, Jury returned to the courtroom and took their respective seats in the jurybox.

BAILIFF: The Jury is present, Your Honor.

THE COURT: Good morning, ladies and gentlemen, we will start in this morning where we left off yesterday afternoon. State call your next witness.

MR. FOWLER: The State will call Violet Lenze.

THEREUPON, VIOLE LENZE was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FOWLER:

Q. State your name and occupation, please?

A. Violet Lenze Roberts. My occupation at the present time?

Q. Yes, mam [sic].

A. Insurance underwriter.

Q. By whom were you employed on the 18th of September of last year?

A. Monroe County Sheriff Department.

Q. Did you have occasion that morning to respond to a call from the Coast Guard State?

A. Yes, I did.

Q. What was to be your function in connection with that particular call?

Q. Inventory officer of the seized contraband.

Q. And what exactly did you do in connection with the articles?

A. I inventoried the bales by number and by weight.

Q. And how many by number did you inventory?

A. 421.

Q. What did that come out to in weight?

A. Approximately 26,257 lbs.

MR. FOWLER: Thank you, no further questions.

THE COURT: Cross examination?

MR. JAMES: I have a motion at the side bar, if it please the Court.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. JAMES: Your Honor, I move to strike the testimony of Violet Lenze as being completely irrelevant, all she's answered the number of bales and weight

of some unknown bales which are not identified, not admited [sic] in evidence, I think it is irrelevant whatever she weighed down there.

THE COURT: What says the State?

MR. FOWLER: Your Honor, the State feels it's entirely relevant, tthe [sic] testimony is that all bales were similar to these, the packaging, description and size, these three bales were selected at random from that entire lot, and based on that reasonable presumption can be made that the remainder of that load was in fact, it would prove to be shortly.

MR. JAMES: I don't think you can make that presumption Your Honor, the samples are from every tenth bale, the other nine bales may have or may not have been.

THE COURT: I deny your motion to

strike.

THEREUPON, CROSS EXAMINATION BY MR. JAMES:

Q. Mrs. Roberts, you yourself of your own personal knowledge don't know what the contents of any of those bales were that you all weighed down there, do you?

A. I know what it looked like.

Q. I'm not worried about what it looked like, I'm saying of your own person knowledge you didn't know?

A. No.

Q. You are not a chemist, and you're not a criminalist?

A. No.

Q. Qualified under the laws to analyze the substance and tell us what it is?

A. No, sir.

Q. How were the bales weighed, were

they weighed in its entirety, with the cardboard box and all of the contents?

A. Yes, sir.

Q. The contents of the wrapping and the box were not removed tand [sic] the contents were not weighed individually, correct?

A. No, sir.

Q. And the boxes, bales were not opened up?

A. No, they were not.

Q. So, you yourself in the majority of the bales couldn't look down into there and see what if anything was contained in the bales, right?

A. No.

Q. All you all were doing at this point, weighing some cardboard boxes basically that were wrapped in some type of plastic, some type of plastic wrapping, right?

A. Yes, and samples were being taken from the bales.

Q. From some individual bales?

A. Right.

Q. But your testimony was that you weighed up all this.

A. That is correct.

Q. And you couldn't tell us for sure what was contained in each one of those cardboard boxes that you didn't open up and inspect, right?

A. To my knowledge, no.

MR. JAMES: Thank you, I have no further questions.

THE COURT: Any redirect?

MR. FOWLER: No, sir.

THE COURT: Thank you, you may step down. Call your next witness.

MR. FOWLER: The State calls Norman Lee.

THEREUPON, NORMAN LEE was recalled as

a witness for the State.

THE COURT: You're still under oath, Mr. Lee.

MR. LEE: Yes, Your Honor.

DIRECT EXAMINATION BY MR. FOWLER:

Q. Mr. Lee, when last you were on the stand, you told us you were property custodian for the Monroe County Sheriff Department, do you function in any other capacity?

A. Yes, sir, I am the criminalist employed by the Monroe County Sheriff Department, I operate the Sheriff Department Crime Laboratory which entails the examination of evidence submitted upon request.

Q. What exactly is a criminalist?

A. A criminalist can be defined as one who examines, identifies, individualizes, compares physical evidence by applying natural sciences such as

chemistry to law science matters.

MR. FOWLER: Mr. James, will you stipulate to Mr. Lee's qualifications?

MR. JAMES: Yes, sir.

MR. FOWLER: As an expert in the identification of Cannabis Sativa or other controlled substances?

MR. JAMES: Yes, sir.

THE COURT: Ladies and gentlemen, it has been agreed upon between the attorneys that this witness is an expert in examining, testing and identifying unknown substances, is that a fair statement, gentlemen?

MR. JAMES: Yes, sir.

THE COURT: So you will treat him as being said expert. Go ahead.

Q. Mr. Lee, when you cane the last time you brought what has now been marked as State Exhibit A, B, C, and D for Identification, have you had the oppor-

tunity to perform any examinations on those items that you brought to court.

A. Yes, sir, I have examined all four items.

Q. As the State's Composite Exhibit A for Identification, 41 small brown paper bags, will you describe please for us what exactly you did concerning testing the material in that composite exhibit?

A. Yes, sir, I found 42 bags present in this package, I chose 21 of these packages at random and performed, after weighing the material contained in these packages, I examined the material under a low powered stereo-microscopic microscope in the laboratory and performed also chemical tests on the material present in the packages.

Q. What kind of chemical test did you perform?

A. The chemical test that I performed was called the Duquenois Levine examination, modified Duquenois Levine test for tetrahydrocannabinol, the active ingridient [sic] in Marijuana.

Q. And what did the test that you performed on 21 of those envelopes indicate to you?

A. I received positi-. microscopic evaluation ofor [sic] Cannabis Sativa, and also positive chemical tests for tetrahydrocannabinol, concluding that the material contained in the packages were Marijuana of Cannabis Sativa.

Q. In how many of those 21 packages that you examined that day?

A. In all of the 21 packages that I examined, sir.

Q. I call your attention to what has been marked as State Exhibits B, C, and D for Identification, and ask you if

you've had the opportunity to perform any tests on those particular items?

A. Yes, sir, I did, I weight each package and I also removed a representative sample of the material from each package by cutting an incision into the package and getting a sample from within the core of the package itself to represent the contents of the package. The same tests were performed on these samples.

Q. What was the result of those tests?

A. My item one, I'm not certain what package this would correspond to but one of the white plastic wrapped packages was found to weigh 67 lbs., the other white plastic wrapped package was found to weigh 62 lbs. and the third clear plastic wrapped package containing the burlap and brown paper wrapping was

found to weigh 51 lbs., this totaled 180 lbs. The examinations performed in the material removed from each one of those, I also identified as being Cannabis Sativa more commonly known as Marijuana.

Q. Mr. Lee, when you weighed the items, those three items, State Exhibit B, C, and D, did you remove the cardboard box and the burlap and the rest of that?

A. No, sir, I didn't.

Q. Did you have an opportinity to examine the wrappings and the material contained in those three packages, around those three packages?

A. Other than what I just described, the white packages contained a cardboard cigarette box, Marlborough cigarette box and the material is contained therein.

Q. Is there any possibility that those three packages weighed 80 lbs.

MR. JAMES: I am going to object to that, that calls for a conclusion in the mind of this witness, there has been no proper predicate of foundation, his expertize [sic] went to analyze substances and tell us what they were.

THE COURT: Sustain the objection.

Q. Mr. Lee, did you weigh the items, State Exhibit A for Identification in the small brown paper bags?

A. I weighed the contents in the bags, not the bags in themselves.

Q. And what did the contents of the small bags come up to?

A. The total amount of material contained in the 21 of the packages weighed 302.6 gr., this material was all identified as being Cannabis Sativa.

Q. What does 302.6 gr. come up to real weight.

A. It would be slightly less than

3/4 ofone [sic] pound, or approximately 10 to 12 oz. of material.

Q. Mr. Lee, are you familiar with weighing certain items do you have particular training as to how items are weighed?

A. Yes, sir.

Q. Will you describe what training you've had concerning taking the weight of items?

A. This would be using and making certain that the scales that you are using are accurate by checking them periodically to make certain that they were within limits.

Q. Did you do that concerning your scales?

A. Yes, sir.

Q. Go ahead.

A. In many incidents packages, whole packages will be weighed, the contents

removed therein, the weights of the packing material can be determined, noting the weights of the material contained therein, total weight of the package going to determine the weight of the packing material itself, and also from determining this one could use this as a, by just weighing a complete package wrapped exactly the same manner, you could subtract the tear-weight and determine what the enet-weight [sic] of the package would be. I've been involved with weighing materials definitely over the past 8 yrs., and have been familiar with weight and measures, I would have to say, probably since I was 6 or 7 years old.

Q. Have you had the opportunity to weigh a number of items similar to the 3 which are here in the courtroom?

A. Yes, sir, most definitely.

Q. In your experience in the past, have any 3 similar items packaging material weighed a total of 80 lbs?

A. No, sir, they have not had the packaging material present in these exhibits could not total 90 lbs. in any way, shape or form.

MR. FOWLER: Thank you, sir.

THEREUPON, CROSS-EXAMINATION BY MR. JAMES:

Q. Did you weigh the packaging material in this case?

A. No, sir, they were not separated and weighed.

Q. Have you ever weighed packaging material similar to this?

A. Yes, sir, I have.

Q. You have, when?

A. Upon occasion in the last couple of years.

Q. Tell me what type of packing

material are in these 3 exhibits?

A. The clear plastic wrapped package contains plastic material, masking tape, burlap, wrapping material and also brown paper wrapping material. The two white plastic wrapped packages contain also masking tape and cardboard cigarette boxes.

Q. Okay, in these 3 specific exhibits, did you remove the contents and weigh just the contents?

A. No, sir, I did not.

Q. You weighed the entire package together, the box and the wrapping material and the contents, correct?

A. That's correct, sir.

Q. Other than making a decision and taking out a core sample, did you open out the boxes and spread out the contents and examine it?

A. No, sir, I did not.

Q. Then you're not sure, there may be something else contained in those packages other than vegetable material, right, that you didn't examine.

A. Will you please rephrase that?

Q. Okay, you cut down through the middle and removed core sample, right?

A. Yes.

Q. But you didn't open up the box and visually inspect all the vegetable material to make sure that there was nothing but a vegetable material contained in the box, right?

A. No, sir, I did not open the packages but the manner in which I sampled them would indicate what's in the package.

Q. How many core samples did you take out of each exhibit?

A. There was one single incision, if you'd like me to indicate where the

incision is.

Q. Answer my question, if you would, you only, in this whole package, you made one incision, reached down and took out a core sample from womewhere in there, correct?

A. I believe that's correct, sir.

Q. You, yourself didn't visually examine to see what else was contained in there?

A. No, sir.

Q. You, yourself don't know what else was contained in here other than the core sample you took out which you assume to be representative of the entire thing, right?

A. Yes, sir.

Q. There might not be, you may have, what if your [sic] took the incision right here at this end, okay, see where I'm pointing?

A. Yes, sir.

Q. The same material may or may not be present in the remainder of the bale, correct, right?

A. There is a very minor possibility that that could be correct but in all of the packages that I've gone through and examined, this is an accepted manner of sampling the material from these packages.

Q. Fine, but you yourself cannot get up and tell us that 100% of what's contained in the rest of this bales [sic], since you didn't examine it even visually, right?

A. I examined the sample that I removed from it.

Q. The sample, but the remainder of the material, whatever it might be contained in the rest of the bale you did not examine, right?

A. That is correct.

Q. You did not perform any test on the remainder of the material, right?

A. That is correct, sir.

Q. And you didn't remove any foreign material, seeds, stems, stalks, what have you from the remainder of the material did you?

A. No, sir, I did not.

Q. So the weight that you have given us is the total weight of anything that is contained in there, right?

A. Yes, sir.

Q. You're just telling what that package weighs?

A. That is correct, sir.

Q. What is the weight of the actual samples that you took from Exhibit B?

A. The sample weight from B, C, and D were replaced back in the package without weighing the material in itself.

A. Not the material that I removed from the 3 packages.

Q. So you don't know what weight, if any, was in the representative samples that you removed?

A. There was an approximate weight of...

Q. Not approximate, do you know?

A. Exactly, no, sir, I do not, I did not weigh.

Q. You told me that you've been weighing things since you were 6 years old, you calibrate your scales, but you didn't happen to weight the samples you took?

A. I weighed the package sir, and I examined.

Q. Did you understand my question?

A. I believe so, I'm trying to explain what...

Q. I just want an answer to my ques-

tion, yes or no. Did you weigh the representative samples taken from Exhibits B, C and D?

A. No, sir, I did not.

Q. Now, you say that you weighed the contents of some 21 paper bags, right?

A. That is correct, sir.

Q. Okay, when you weighed and that weighed a total of 10 to 12 ozs., right, the contents of the 21 bags, you remember that?

A. It weighed 203.6 grams.

Q. Which you told the prosecutor which is roughly 3/4 lb. or roughly 10 to 12 ozs., right?

A. This figuring 28,35 grams per oz, figuring 16 ozs are contained in one pound.

Q. Okay, when you weighed that, you didn't clean it and remove the foreign material, stems and seeds from that

sample, did you?

A. The stems were not removed, the seeds were not removed, they weighed in total, however, the material contained in the sample that I weighed was just vegetation and not parts of packaging materials.

Q. But it did include the weight from the stems and the seed that were present in that vegetable material?

A. Yes, sir, it did.

MR. JAMES: Thank you, I have nothing else.

THE COURT: Redirect?

THEREUPON, REDIRECT EXAMINATION BY MR. FOWLER:

Q. Mr. Lee, will you give me a [sic] approximation of time that would take you to remove the stems and seeds from the 21 little brown paper bags of the material that's contained in there?

MR. JAMES: Your Honor, I object to the question being completely irrelevant to the issue here today.

THE COURT: Objection overruled.

A. Will you please repeat the question.

Q. And you give me an idea how much time it would take you to separate the seeds and stems from the 21 little brown paper bags that you examined.

A. I would have to estimate that it would take between one half to one hour to remove stems and seeds from one of the small brown paper bags that are marked in State Exhibit A for Identification, that's in each specific bag itself.

Q. Just one specific bag?

A. Yes, sir, that is correct.

Q. Mr. Lee, approximately how long would it take you to remove the stems

and seeds from the material contained in the 3 packages, B, C, and D, here in the courtroom?

A. That would take weeks, possible [sic] months to separate stems and seeds.

MR. JAMES: Your Honor, I also object to that question on the grounds it being irrelevant, I move to strike.

THE COURT: Same ruling.

Q. Can you give us an approximation of how long it would take for 421 such bundles?

MR. JAMES: I would object to that question, Your Honor, the basis, there have been no 421 bales offered here and marked for identification, it is completely irrelevant.

THE COURT: Sustained.

MR. FOWLER: I have no further questions.

THE COURT: Recross?

THEREUPON, RECROSS EXAMINATION BY MR. JAMES:

Q. The question the prosecutor just asked you, it could be done, couldn't it?

A. Most definitely it could be done.

Q. And when somebody smokes Marijuana or Cannabis, they've got to clean it, you can't smoke the stems and the seeds, can you?

MR. FOWLER: Your Honor, I don't believe Mr. Lee has been offered as an expert on smoking Marijuana, simply for identification purposes.

THE COURT: Objection is sustained.

MR. JAMES: Your Honor, may I have the grounds for the objection, he's objecting to his own expert?

THE COURT: The witness has not been made an expert as to that, the Court

sustained his objection.

Q. Mr. Lee, are you familiar with the process by which Marijuana is cleaned in order to be able to smoke it?

A. Yes, sir, I am.

Q. In order to smoke it, don't you remove the stems and seeds?

A. In some incidents in evidence that I've examined I've found stem fragments and seeds present in Marijuana cigarettes and in other incidents I have found them well manicured and the stems and seeds removed from cigarettes that have been handrolled for the purpose of smoking Marijuana.

Q. Isn't it general accepted practice to clean and remove the vast majority if not all stems and seeds?

A. That would depend upon the individual that was preapring [sic] the cigarette himself.

Q. I'm asking are you aware of the general accepted practice, are you or aren't you?

THE COURT: I don't think we have any generally accepted practice, it's illegal. I'm not going to allow the question.

MR. JAMES: I'd like to put something into the record at the side bar.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. JAMES: I object to the Court not allowing me to ask the question where there was no objection from the State and the Court sua sponti [sic] making the comment and not allowing me the question, I object to the ruling of the Court and I object to the trial Court interjecting itself into the trial.

THE COURT: It's in the record.

MR. JAMES: I have no further ques-

tions.

MR. FOWLER: Your Honor, at this time the State will ask that State Composite Exhibit A, B, C and D be admitted into evidence.

MR. JAMES: Your Honor, I object and I'd like to object outside the presence of the Jury.

THE COURT: All right, the Jury retire to the juryroom, please.

Thereupon, Jury left courtroom.

MR. JAMES: Your Honor, at this time I would object to the introduction of these exhibits into evidence, renew my motion to suppress, submit to the Court that this evidence was seized as the result of an illegal and improper search and seizure under no basis at all, I would ask the Court at this time to rule, the Statute giving the Florida Marine Patrol the authority to stop any

vessels that they desire for safety inspection check or documentation check, it's unconstitutional, I would move that there's no basis for probable cause whatsoever for stopping this vessel that was being lawfully operated on the water, therefore since it was stopped, the search was illegal, and I further submit that the search was the direct fruit or result of an improper and invalid confession, therefore it should be suppressed, the fruit of a poisonous tree.

I think there has been a lack of proper foundation as to the material contained in exhibits B, C, and D, I submit there has been an improper amount of evidence to show whats [sic] contained in 21 of the brown paper bags contained in exhibit A, since there has been no testimony as what's contained in some of those bags, there has been testimony

that 21 of them contained something, there has been no testimony whatsoever to show what the other 21 contained since the chemist did not perform a test on them, to admit those bags into evidence, I don't know which 21 since they were composite, he didn't tell me which 21 he examined and which 21 he didn't, so I submit to you that all 41 or 42, I'm not sure of the number, the Prosecutor said 41 and the witness said 42.

MR. FOWLER: That was an error when I said 41.

MR. JAMES: Okay, so there's 21 bags that we don't have a vague opinion of what they contained, but they are all mixed in there together so I'm not quite suire which part of that composite exhibit might be admissible or might not, now, I'm not receding from my argument that they, all of it should be

suppressed, but I think it lacks proper foundation as to 21 of those bags that are coming, I don't know what they contained.

THE COURT: Are all these things you're stating grounds for your objection to the admission of the proffered evidence?

MR. JAMES: Yes, sir.

THE COURT: What says the State.

MR. FOWLER: Your Honor, a recent case by the Third District indicates that a criminalist may make a reasonable assumption as to what the rest of the quantity contained is, from the samples that he used, the testimony is that all 21 samples contained Cannabis, they were all removed in the same manner, there is nothing particular [sic] different about the 21, that half of the samples submitted that being the number 21, were

selected at random from the total of 42. Logical and reasonable assumption can be made therefore that the rest of the items also contained Cannabis.

As to Mr. James's argument to the suppression, the Court has already ruled on it.

MR. JAMES: It seems like to me then that what I think we should probably do in these cases is take one bale and take one sample and that would be representative of the entire ship, under this rationality we could just dispense with bringing any of the other in or weighing it or anything else, all we need is one sample, one known weight and that's representative of every bale that's on there. Counsel is right in the case of the Thire [sic] District which was a two to one decision, maybe they will get a chance to rectify, but that is in con-

flict with the other Districts, specifically with the Second District as to the weight and specifically to the Supreme Court as to the weight, he's right, two of the judges did decide as he indicated, but anyway that is my basis for objection.

THE COURT: State Composite Exhibit A for Identification is admitted into evidence as State Composite Exhibit 1; State Composite Exhibit B for Identification is admitted into evidence as State Composite Exhibit 2; State Composite Exhibit C for Identification is admitted into evidence as State Composite Exhibit 3; State Composite Exhibit D for Identification is admitted into evidence as State Composite Exhibit 4.

MR. JAMES: Your Honor, prior to the State resting, I'd like to make another motion. I would move at this time to

strike followed by a motion for a mistrial in that the State went into testimony of Mark Walker at some great length of advising Mr. Garcia and Mr. Casal of their Miranda rights, and went into quite some detail and I submit that this was in error since the State and everybody knew that there had been no statements made by Mr. Casal and therefore this brought undue attention, the State did not repeat this mistake with Mr. Valdes, Mr. Valdes's testimony was simply to the rights of Mr. Casal, whatever statement Mr. Casal made, as I recall Mr. Walker, he testified this morning that he warned both defendants of their rights, then they got into a conversation concerning what Mr. Garcia said, I submit that this was improper bringing of attention on the rights of Mr. Casal going through when the witness and the

State they had not made the statement going through and prejudicing the Jury by telling them all the rights they told them and then not coming forth with any statement, I submit that it was indirect, impermissible direction of attention upon the non-statement of Mr. Constantino Casal.

THE COURT: You're not saying Counsel that there is some statement made referring to his failure to make a statement?

MR. JAMES: No, sir, I said exactly what I wanted to say, sir.

THE COURT: I realize you said what you wanted to say but I'm asking you if your argument is that some statement was made concerning Casal, I didn't hear it.

MR. JAMES: As I understand, in the case law of this State, what you cannot do directly cannot do indirectly, I submit the cases say that when this

situation has come forth, that you're not allowed to get up and say, 'well, I warned the Defendant of this Miranda right, this Miranda right, and that Miranda right', and you didn't have to complete it by saying and 'he didn't say anything', when you do that, that Jury is smart enough to know that he didn't make any statement, and when you know he didn't make a statement it's improper to go through the warning of the rights and prejudice the Jury that very way, that's what cases say.

THE COURT: What says the State.

MR. FOWLER: Your Honor, in no way did the State attempt to make a comment on Mr. Casal's silence, there was simple recitation of exactly what happened, the predicate was layed [sic], as to the statement made by Mr. Garcia. As to Mr. James's concern for any inference

the Jury might have, there was nothing said at all regarding Mr. Casal in that particular incident, the only reference made to Mr. Casal was in fact by Detective Valdes who testified from the stand that Mr. Casal spoke no English. So, if anything, we are going to be in a position where Mr. Casal wouldn't be expected to say anything because he spoke no English.

THE COURT: Anthing else?

MR. JAMES: That's it, sir.

THE COURT: Motion denied.

MR. JAMES: Sir, I made two motions, motion to strike and motion for a mistrial.

THE COURT: They are both denied.

MR. FOWLER: Your Honor, the State would rest at this particular point.

THE COURT: Do you have a motion now that the State rest?

MR. JAMES: Yes, sir.

THE COURT: You want to make your motion now, or not?

MR. JAMES: Yes, sir, if I can have a couple of minutes to line up my witness.

THE COURT: I don't care, I'm just asking you.

MR. JAMES: Yes, sir.

THE COURT: You'll make it now rather than when the Jury is brought back in.

MR. JAMES: Yes, sir. Your Honor, I move for a verdict of acquittal as to both of the defendants, Mr. Casal and Mr. Garcia, I submit that there is insufficient and inadequate amount of evidence to go to the Jury. I rest on that.

THE COURT: What says the State?

MR. FOWLER: Your Honor, the State feels that the record will speak for itself and the matter should be sub-

mitted to the Jury.

THE COURT: Motion denied. Bring in the Jury.

MR. JAMES: Your Honor, I request before we get started I can have the five minutes to get my side of the case ready.

THE COURT: All right, we'll just leave the Jury where they are and give you five minutes to get ready, then we'll come in and I'll announce to the Jury the admission of evidence and you'll rest, we'll go ahead. It being agreed that your motion was timely made.

MR. JAMES: Yes, sir.

Thereupon, Court recessed and reconvened in five minutes.

THE COURT: Is Defense ready?

MR. JAMES: Yes, sir.

THE COURT: Bring in the Jury, please.

Thereupon Jury returned to the court-

room and took their respective seats in the jurybox.

BAILIFF: The Jury is present, Your Honor.

THE COURT: Ladies and gentlemen of the Jury, before you were sent to the juryroom the State had offered into evidence State Exhibits A, B, C, and D, for Identification, the Court has admitted into evidence those exhibits as State Exhibit 1, 2, 3, and 4. State call its next witness.

MR. FOWLER: Your Honor, at this time the State will rest.

MR. JAMES: Your Honor, the Defense would renew all motions.

THE COURT: I'll make my notes accordingly.

MR. JAMES: Thank you.

THE COURT: Ladies and gentlemen, we now come to the Defendants [sic] side of

the case, Counsel for the Defendant reserved his opening statement until this time, you may now proceed with your opening statement.

MR. JAMES: Your Honor, we call Irving Higgs for our first witness and waive opening statement, if it please the Court.

THE COURT: All right, sir.

THEREUPON, IRVING HIGGS was called as a witness for the Defense and after being dly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JAMES:

Q. Please state your full name, sir?

A. Irving Albert Higgs.

Q. Occupation?

A. Property Appraiser, Monroe County.

Q. How long have you been with that office?

A. Approximately 13 years.

Q. And you've been the property

appraiser for the last couple of years?

A. Yes, sir.

Q. Did you bring something to court on my direction?

A. Yes, sir.

MR. JAMES: Your Honor, upon stipulation with the State, the Defense on behalf of Defendant Casal would now ask that this be marked and received as the State stipulated, these 3 charts or diagrams that Mr. Higgs has brought with him may be so received.

THE COURT: What says the State.

MR. FOWLER: The State has no objections.

THE COURT: Will be admitted, is that the agreement?

MR. JAMES: Yes, sir. We can mark it composite exhibit, if you wish, there are 3 pieces, sir.

THE COURT: All right, by stipulation

the exhibit proffered by the Defense as to Defendant Casal is admitted into evidence as Defendant Casal's Exhibit 1.

Q. Mr. Higgs, will you now correlate your testimony with Casal Exhibit 1 in evidence and will you please tell me what that is?

A. This is the general highway map of Monroe County, Florida, dated February, 1966.

Q. Okay, flipping through the third page of the exhibit, will you tell me what specific area, what that shows, if anything?

A. The lower part of the Florida Keys, Monroe County.

Q. Okay, and that shows the Monroe County where it exist, is that correct?

A. Right.

Q. Now, that it has been received into evidence, will you step over to the

Jury box for the next question, I want you to show the Jury where the seaward boundary, the ocean side boundary of Monroe County is, step over to the jury-box so you can show them, please.

A. Right here in the lower keys, one particular item that I would have on the tax roll for tax purposes would be right her [sic] in Logger Key, looking at this island here, this is off shore [sic] of the Florida Keys, off of Cudjoe Key.

Q. That is the last property or land that you have...

A. On the county tax roll for tax purposes.

Q. On the ocean side, correct?

A. Yes.

Q. Now, other than that piece of property, can you tell us specifically where the boundary of Monroe County ends on the ocean side?

A. No, sir, I can't.

Q. So all you can say for sure you know it goes as far as this, because that's in your tax roll, correct?

A. Yes, sir.

Q. To Logger Head, you cannot tell where else at all is Monroe County, where it is and where it isn't, right?

A. The island itself I have on the tax roll, the boundary of the county, there is no distinction on the map as to where the boundary is.

Q. Okay.

A. The island is on the Monroe County tax roll.

MR. JAMES: Thank you, I have no further questions.

THE COURT: Cross examination.

MR. FOWLER: Yes, sir.

THEREUPON, CROSS EXAMINATION BY MR. FOWLER:

Q. Mr. Higgs, I note that's a highway map.

A. Yes, sir.

Q. You use that for the purposes of your tax roll?

A. Yes, sir.

Q. Is that the primary purpose of that particular map?

A. For tax purposes, location of the Outward Islands for tax purposes, yes.

Q. Unless you have some taxable interest in something on that particular map you wouldn't necessarily be concerned with it, is that correct?

A. That's right.

MR. FOWLER: Thank you, sir.

THEREUPON, REDIRECT EXAMINATION BY MR. JAMES:

Q. Mr. Higgs, you're a duly elected and is not your job and function to tax and know the location of all properties,

islands, what have you, located within the boundaries of Monroe County, Florida?

A. Will you repeat that question?

Q. Isn't it the function of your job to list on the tax roll all properties located, even Governmental properties appear here, even Governmental owned islands within the compounds of Monroe County appear exempt but they appear in the tax roll, correct?

A. That's right.

Q. So it doesn't matter the type of ownership, if it's private or Governmental, we may not collect any taxes on it, what to you call it, an exemption?

A. It is an exemption, the piece of property is exempted but my job is to list all properties whether they be taxable or nontaxable.

Q. And this map that you brought

shows what is Monroe County and what's not Monroe County?

A. Right.

MR. JAMES: Thank you.

THE COURT: Recross?

MR. FOWLER: No, sir.

THE COURT: The witness may step down. Call your next witness.

MR. JAMES: The Defense rests.

THE COURT: Does the State rest its entire case?

MR. FOWLER: Yes, sir.

THE COURT: Ladies and gentlemen of the Jury, we have arrived at one of those times where the proceedings take place outside your presence, so we might as well send you to an early lunch. So, you're excused for lunch, again let me remind you of my admonishments yesterday about talking to anybody, letting anybody talk to you and all that sort of thing.

I ask that you be back in the jury-room at one o'clock.

Thereupon, Jury left courtroom.

MR. JAMES: Your Honor, I offer a stipulation to the State, I renew all my prior motions and objections including the motion for judgement [sic] of acquittal and I adopt by reference to all arguments previously made during, in behalf of the motion to suppress evidence, motion to suppress confession and...

THE COURT: I'm not going to rule on everything that I ruled on before.

MR. JAMES: All I can do is make my motion and let the Court do whatever it wishes and act according, sir.

THE COURT: The State has anything else?

MR. FOWLER: No, Your Honor.

THE COURT: The renewed motion for

motion for judgement [sic] of acquittal is denied.

. . . .

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No. 81-2318

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA; ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BRIEF IN OPPOSITION

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PETITION UNTIMELY FILED

The Petition for Writ of Certiorari filed by the State of Florida was not filed within the time required by Supreme Court Rule 20 nor was the application for an Extension of Time filed within the time required by Supreme Court Rule 29.

The Judgment of the Supreme Court of Florida in favor of the Respondents was entered on January 14, 1982. The Petitioner sought a rehearing which was denied on March 15, 1982 at which date the Mandate was issued. On May 14, 1982, 60 days thereafter, the Petitioner filed a Motion for an Extension of Time to file the Petition for Writ of Certiorari giving as a justification therefor the heavy caseload of the Attorney General's Office. This request for an Extension of Time was untimely filed in that it was not submitted at least 10 days before the specified final filing date. A 30 day extension of time was granted by this Court permitting the Petitioner to file a Petition for Writ of Certiorari on or before June 13, 1982. On June 10, 1982 the Petitioner again filed a Motion for an Extension of Time in which to file its Petition for Writ of Certiorari. This Motion was also untimely and in violation of the Supreme Court Rule 29.2 in that it was not submitted at least 10 days before the specified final filing date. Thereafter the Petition for Writ of Certiorari was filed on June 17, 1982. Said filing was not timely in that it was violative of Supreme Court Rule 20.1 in that the filing occurred more than 90 days after the Order of the Supreme Court of Florida denying the Petitioner's Motion for Rehearing.

For the foregoing reasons, the Petition for Writ of Certiorari herein should be denied.

QUESTION PRESENTED FOR REVIEW

The "Question Presented for Review" by the Petitioner does need correction in that it does not accurately state what the case is about. The Respondents' fishing vessel was stopped by the Florida Marine Patrol for the purposes of inspecting the boat's Registration Certificate. One of the Marine Patrol Officers boarded the vessel and commenced to search it without a search warrant. The Officer proceeded to the forward portion of the vessel and attempted to gain entry into the forward hold. When the Officer was questioned by one of the Respondents as to the legality of the search and refused to permit the Officer to further search the vessel unless the Marine Patrol had a search warrant, the Respondents were told that they were under arrest and that a search warrant was not necessary to search their vessel. The search that followed in the forward hold of the vessel did produce the contraband which was the subject matter of the criminal proceeding. The "Question Presented for Review" would more accurately and appropriately be stated as follows:

> WHEN THE RESPONDENTS, WHO WERE NOT SUSPECTED OF BEING INVOLVED IN ANY ILLEGAL ACTIVITY, WERE STOPPED BY THE FLORIDA MARINE PATROL FOR THE PURPOSES OF INSPECTING THE VESSEL'S REGISTRATION PAPERS AND FOR THE PURPOSES OF SEARCHING THE VESSEL, AND WHERE THE RESPONDENTS WERE NOT FOUND TO HAVE ON BOARD THE APPROPRIATE BOAT REGISTRATION PAPERS, DID THE SUPREME COURT OF FLORIDA CORRECTLY RULE THAT THE WARRANTLESS SEARCH BY THE MARINE PATROL OFFICERS OF THE FORWARD HOLD OF THE VESSEL WAS INVALID?

JURISDICTION

Supreme Court Rule 21.1(h) requires the Petitioner to show that the Federal question being presented to this Court was timely and properly raised so as to give this Court jurisdiction to review the Judgment on Writ of Certiorari. Although that Rule requires pertinent quotations of specific portions of the record, or summaries thereof, with specific references to the places in the record where the matter appears, the Petition for Certiorari is void in this regard. The reason for this is that the specific question being raised by the State was not asserted by the State nor was it asserted by the Respondents before the Supreme Court of the State of Florida. Said Court was the highest Court of the State of Florida and it is the decision of that Court which the Petitioner is seeking to have reviewed. The State's question being addressed to this Court at this time was not addressed by the State to the Supreme Court of Florida until after the Court entered its decision and rendered its opinion affirming the decision of the Third District Court of Appeal. The State raised the question before the Supreme Court of the State of Florida in its Petition for a Rehearing which Petition was denied. (Appendix page 1) The State has therefore not preserved its question as a point for review by this Court.

STATEMENT OF THE CASE

Because of the nature of the question being presented by the State to this Court for review, the Statement of the Case as presented by it is deficient in certain important respects. In addition to that contained in the State's Statement of the Case, it should be noted that:

The vessel containing the contraband was 45-49 feet long. (Appendix page 2) The hold containing the contraband

was located in the forward portion of the vessel. It was covered by a heavy hatch which could not be lifted except by the efforts of two men. This heavy hatch had on top of it fish traps which first had to be removed before the hatch could be lifted. (Appendix page 2, 3, 4, 5, & 6)

The Statement of the case should further contain the finding by the Florida Supreme Court that the Marine Patrol Officers did not have consent or probable cause to conduct a search of the forward hold. (Appendix page 7 & 8)

ARGUMENT

The State is requesting this Court to review on Writ of Certiorari the decision of the Florida Supreme Court for the stated reason that it decided a Federal question in a way in conflict with a Federal Court of Appeals. The State in its Petition for Writ of Certiorari to this Court asserted three reasons why the decision is in conflict:

A. The search was incident to the arrest, and

B. The Carroll Exception, and

C. It was an inspection search.

It is the respondents position that no conflict exists between the decision of the Florida Supreme Court and any Federal Court of Appeals case decision cited by the State. The cases cited by the State are distinguishable and have no application to the case at bar. The Respondents analysis of the asserted conflict will coincide in this brief to the analysis of the State in its Petition for Writ of Certiorari.

A. SEARCH INCIDENT TO ARREST. The State argues in its Petition for Writ of Certiorari that the search was proper as being incident to the arrest and therefor in conflict with Chimel v California, 395 U.S. 752 (1969). An examination of

the facts of that case reveals that it is not in conflict with the decision of the Supreme Court of Florida. Instead it is clearly distinguishable. It also could be used as authority for the proposition that the search was not incident to the arrest. The Chimel case involved a defendant suspected of burglary who was arrested in his home. Without a search warrant the arresting police officers conducted a search of his entire three bedroom home, including the attic, the garage, a small workshop and various drawers in dressers located therein. The Supreme Court suppressed the evidence that was discovered as a result of that search. In doing so it stated that under the "search incident to arrest" principal, when a arrest is made it is reasonable for the arresting officer to search the person arrested in order to remove any weapons which the latter might seek to use in order to resist arrest or effect his escape. It is also reasonable for the arresting officer to search for and seize any evidence on the arrestees person in order to prevent its concealment or destruction. It is furthermore reasonable to search the area into which an arrestee might reach in order to grab a weapon or evidentiary items. The Court went on to say that there is no comparable justification for routinely searching rooms other than that in which an arrest occurs, or for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well recognized exceptions, may be made only under the authority of a search warrant and the adherence to judicial process mandated by the Fourth Amendment requires no less. In the case at bar where the contraband was ultimately found, the hold was in the forward area of the vessel and was secured with a heavy hatch which required two men to lift. On top of this hatch was located fishing traps which also had to be removed in order for entry to be had into the hold. The arrest did not

occur in the hold. It occurred in the cockpit of the fishing vessel which was located in the back of the boat. A search of the cockpit would perhaps have been valid, but surely not a search of the forward hold.

The State then cites the case of New York v Belton, ___ U.S. ____, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981). The facts of the Belton case were that an automobile was stopped by a police officer because it was traveling at an excessive rate of speed. The police officer upon approaching the automobile smelt burning marijuana and observed what he thought was an envelope of marijuana on the floor of the car. Contemporaneous with the arrest of the occupants of the car, the police officers searched the passenger compartment and found incriminating evidence therein. The Court in ruling that the evidence was admissible stated as follows on page 774 of its opinion:

> "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his authority. While the Chimel case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of "the area within the immediate control of the arrestee" when that area arguably included the interior of an automobile and the arrestee is its recent occupant. Our reading of the cases suggests the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within "the area into which an arrestee might reach in order to grab a weapon or evidentiary item." Chimel, supra, at 763, 23 L Ed 2d 685, 89 S Ct 2034. In order to establish the workable rule this category of cases requires, we read Chimel's definition of the limits of the area that may be searched in light of that generalization. Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile."

As with the Chimel case, the Court in the Belton case felt that the arresting police officer could lawfully search without a warrant the immediate area where the arrestee was located. The policy intended to be promoted by the Court in both of these decisions was the protection of the police officer and the preservation of evidence from destruction by the arrestee. The hold in the front of the fishing vessel covered by a heavy hatch and fishing traps was not in the immediate area of the arrestees. The justification for the warrantless search in the Chimel case and the Belton case did not exist in the case at bar. The Chimel case and the Belton case could be cited as authority for the proposition that the warrantless search by the arresting officers in the case at bar was unlawful because it could not be considered as incident to the arrest.

The State also suggested that the Court consider U.S. v Martinez-Fuerte, 428 U.S. 543 (1976). This case concerned itself with the legality of a search by border patrol agents which search was conducted at a permanent check point. The border patrol agents had statutory authority to search vehicles. No statutory authority existed for the Florida Marine Patrol Officers to search a vessel. The Martinez-Fuerte case is therefor not a conflict decision.

B. CARROLL EXCEPTION. The State in advancing the argument of the Carroll Exception assumes that probable cause existed. In so doing it ignores the fact that both the Third District Court of Appeal and the Supreme Court of the State of Florida found that probable cause did not exist. The facts of the case, summarized in the opinion of the Supreme Court of the State of Florida and adopted by the State in its Petition for Writ of Certiorari, revealed that the Marine Patrol Officers embarked upon a search of the Respondents' fishing vessel the moment they

got on board. They had no suspicion of any kind while they were conducting their search that the Respondents were involved in any form of criminal activity. The Respondents initially consented to the search, but when the Marine Patrol Officer attempted to search the forward hold where the contraband was, the Respondents resisted the Marine Patrol Officers and told them that they would not permit the search in absence of a search warrant. It was only after the Police Officers misrepresented their authority by telling the Respondents that they did not need a search warrant to search the forward hold, that the Respondents acquiesced to the Police Officers misrepresented authority to search and admitted to the presence of contraband in the foward hold. The Carroll v U.S., 267 U.S. 132 (1925), Chambers v Maroni, 399 U.S. 42 (1970) and U.S. v Ross, ____U.S. _____, 31 Cr. L.3051 (1982) cited by the State in its Petition for Writ of Certiorari are not conflict decisions because there was probable cause in those cases to justify the warrantless search. In the case at bar the Marine Patrol Officers conducted their search without any probable cause.

C. INSPECTION SEARCH. In order for the State to advance the administrative inspection theory, it assumes that the stop of the vessel and the search that followed was for the purpose of checking the fishing permits and the safety equipment. The statement of facts contained in the Petition for Certiorari does not say this. The reason it does not is because the vessel was not stopped nor was it searched for those reasons. (Appendix page 9, 10 & 11) Assuming for argument sake that the Marine Patrol Officer was conducting a safety inspection when she was searching the vessel, it must be recognized that the Florida Legislature has by statute prohibited a Florida Marine Patrol Officer from boarding or searching a vessel unless he has

the consent of the owner or operator or probable cause or knowledge to believe that a violation of the safety law has occurred.[1] Even without taking into account said Florida Statute, the cases cited by the State do not constitute a conflict with the decision of the Supreme Court of the State of Florida. Camera v Municipal Court, 387 U.S. 523 (1967) and Frank v Maryland, 359 U.S. 360 (1959) are authority for the State's position that a lesser degree of probable cause is needed to conduct safety inspection searches. It should be noted initially that the Supreme Court of the United States in the Camera case specifically overruled the Frank case. The Camera case concerned itself with a San Francisco housing code which attempted to authorize building inspectors to inspect residences without a warrant. The defendant brought an action for a Writ of Prohibition claiming that the ordinance authorizing such inspections was unconstitutional. The Supreme Court of the United States in its opinion stated in part:

> "In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interest protected by the 4th Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the 4th Amendment guarantees to the individual, and that the reasons put forth in Frank v Maryland and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the 4th Amendment's protections."

[1] 371.58 Safety inspections; qualified. --No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occured or is occurring.

Camera case stands for the proposition that if the Florida Marine Patrol wished to conduct an administrative search of the kind that is an issue here, it would need a search warrant and this would only be issued if there was probable cause. The Camera case is consistent with and does support the decision of the Supreme Court of the State of Florida if one is to mistakenly assume that the Marine Patrol Officers were conducting a safety inspection.

The State then cites Marshall v Barlow's Inc., 436 U.S. 307 (1978) to support its contention that probable cause was not necessary for the Florida Marine Patrol to search the vessel. The Barlow's case involved a business man who refused to permit an inspector from the Occupation Safety and Health Administration to conduct a warrantless search of his business premises which warrantless search was apparently authorized by a statute. The Supreme Court ruled that such an inspection could only be made with a search warrant. The Supreme Court stated in part as follows:

> "The authority to make warrantless searches devolves almost unbridled discretion upon executive and administrative officers, particularly those in the field, as to when to search and whom to search. A warrant, by contrast, would provide assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutrial criteria. Also a warrant would then and there advise the owner of the scope and objects of the search, beyond which limits the inspector is not expected to proceed. These are important functions for a warrant to perform, functions which underly the Court's prior decisions that the warrant clause applys to inspections for compliance with regulatory statutes. Camara v Municipal Court, 387 U.S. 523. We conclude that the concerns expressed by the secretary do not suffice to justify warrantless inspections under O.S.H.A. or vitiate the general constitutional requirement that for a search to be reasonable a warrant must be obtained."

The Barlow's case is not in conflict with the decision of the Supreme Court of the State of Florida. It is consistent with it and could be used as additional authority if one were to again assume that the Marine Patrol Officer was conducting a safety check.

In summary the Camera and the Barlow's case both involved administrative inspections authorized by statute. The Supreme Court in both of those cases held that in order for the inspection to be lawful two things were required:

1. Probable cause must exist that a violation has occurred, and

2. A search warrant must first be obtained by the inspector in order for him to lawfully conduct his inspection. In the case at bar there was neither probable cause nor a search warrant.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief in Opposition was mailed this 12th day of July, 1982 to the Office of Attorney General, Anthony C. Musto, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820 Miami, Fla. 33128.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL OF
FLORIDA THIRD DISTRICT

POINTS ON APPEAL

I

WHETHER RESPONDENTS LACKED STANDING TO CHALLENGE THE LEGALITY OF THE SEARCH AND SEIZURE?

II

WHETHER DELAWARE V. PROUSE, 440 U.S. 648, 99 S. Ct. 1391, 59 L.Ed2d 660 (1979) CONCERNS AUTOMOBILES ONLY AND DOES NOT APPLY TO RANDOM STOPS OF VESSELS BY THE FLORIDA MARINE PATROL FOR DOCUMENT AND SAFETY INSPECTIONS?

III

WHETHER DELAWARE V. PROUSE SHOULD BE APPLIED RETROACTIVELY?

IV

WHETHER THE DETENTION AND BOARDING OF THE "SAN RAFAEL" WAS PROPER SINCE SUCH ACTIONS ARE WITHIN THE SCOPE OF A MARINE PATROL OFFICER'S NORMAL PATROL, SURVEILLANCE AND INVESTIGATORY DUTIES?

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS EVIDENCE AND CONFESSION IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

Page 3 & 4

BY MR. FOWLER:

Q. State your name and occupation, please?

A. Mark Walker, I'm employed with the Florida Marine Patrol.

Q. Were you employed by them on the 18th of September, of last year?

A. Yes, sir, I was.

Q. Did you have occasion on the early morning hours of that date to be on marine patrol?

A. Yes, sir, I was.

Q. What area were you patrolling?

A. I was patrolling from Key West on the ocean side to Munson Island.

Q. Did you have occasion to approach a boat in the early morning hours of the 18th?

A. Yes, sir, the evening of the 17th, I was on patrol, it was the morning of the 18th that I encountered the boat.

Q. Will you describe the boat, please?

A. Yes, sir, it is approximately a 45 foot, 45 or 49 foot commercial type of vessel, it has a wheel house on the back, as we approached and put the light on it, it had a large number of wired traps that are commonly used for fish traps, it had a puller on the side of the boat that is used to pull different types of traps.

TRANSCRIPT OF TESTIMONY OF MARK WALKER AT HEARING ON MOTION TO SUPPRESS EVIDENCE AND CONFESSION IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

Page 23 - 27

Q. Okay, so now you just told me that when Officer Soli said that she wanted to go up and check the forward part of the boat, right?

A. She asked consent to check the forward hole, yes, sir.

Q. And he said no and wanted to know if you all had a search warrant?

A. Yes, sir.

Q. You then replied to him, after you evaluated the circumstances, you told him that you did not need a search warrant, right?

A. Yes, sir, we were not searching the vessel, I stated that earlier.

Q. But you told him you did not need a search warrant.

A. I stated that earlier, I said...

Q. Just answer my question.

A. I advised him I didn't need a search warrant.

Q. Okay, in reply to my question, you've given us a narrative and now I want to go through with it, okay?

A. All right, sir.

Q. You told him after evaluation that you did not need a search warrant, that you weren't searching the vessel.

A. Right.

Q. Okay, yet Officer Soli had informed him that she wanted to go and check the forward ice hole, right?

A. She asked if she could check the forward ice hole.

Q. She was not given permission to check the forward ice hole.

A. No, sir.

Q. So then you informed him that you did not need a search warrant, did you inform him that you intended to search the vessel any way, that you didn't need a search warrant?

A. My intent wasn't to search the vessel.

Q. Okay, you then placed him under arrest for not having the registration on board, right?

A. Yes, sir.

Q. Subsequently to placing him under arrest for not having a search warrant, did Officer Soli or you communicate your intent to go check the forward ice hole.

THE COURT: He did not arrest him for not having a search warrant.

Q. Excuse me, you arrested him for not having registration on board, right?

A. Yes, sir.

Q. Did you or Officer Soli then communicate your intent to check the forward ice hole of the vessel?

A. No, sir, I didn't, I don't know whether Officer Soli did or not.

Q. Did you make any apparent attempt, or did Officer Soli make an attempt to go check the forward ice hole at that time?

A. She was already standing on the forward part of the boat.

Q. Okay, then subsequently to being arrested is when Mr. Garcia told you that there was no sense checking the forward ice hole because there was grass in it, right? Isn't that what you told me a couple of minutes ago?

A. Wait a minute now, will you rephrase that question, I mean, will you state that question again.

Q. After being arrested, after you told him, 'you're under arrest for not having registration on board, Officer Soli is up in the front on top of the ice hole, isn't that when you told him, isn't that after you told him, 'you're under arrest for not having registration on board, right, and Officer Soli is up there, isn't that when he replied to you, well, there is no sense checking the forward ice hole, because there is marijuana on board?

A. When Officer Soli asked to check the forward hole, Mr. Garcia asked about the search warrant.

Q. It's a real simple question, I want to know if the arrest didn't come before the statement, 'there is no sense checking the forward ice hole, there is marijuana on board', isn't that what you told me about two minutes ago?

A. That the arrest occurred before?

Q. His statement.

A. Yes, sir.

Q. Okay, the arrest happened first, then he came out with his statement.

A. Yes, sir.

Q. And said, 'no sense checking the forward ice hole, there's marijuana in it, right?

A. Yes, sir.

Q. And then you asked him or he acquiesced with your direction to go help Officer Soli lift up whatever covered the forward ice hole, right?

A. After he had been advised of his rights he said again, that there was marijuana on the boat.

Q. Okay, but the first time that he said there was marijuana on the boat was after the arrest and prior to the

warning of rights, right?

A. Yes, sir.

Q. Okay, so he had already been arrested, he told you that and you then formally warned him of his rights and then you asked him again, is there marijuana on board, right?

A. I asked him what was on the boat and he stated, 'marijuana', the first time he said, 'the boat is loaded with grass'.

Q. Okay, and subsequent to all that you then directed, he wasn't free to move, you weren't going to let him take the boat anywhere, were you?

A. Not at that time, no, sir, I was not.

Q. You then, you or Officer Soli through you went ahead and searched the forward hole?

A. With the assistance of the mate and the captain of the vessel, they went up and they moved the fish traps off the top of the ice hole where the hatch was at and they lifted the hatch themselves, like I say, the hatch was too heavy for Officer Soli to lift by herself, I don't know whetner I could have lifted it by myself or not.

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410 So 2nd 155, 156

We next consider an issue the district court did not need to reach. That is the question whether the marine patrol officers, having lawfully stopped respondents' vessel, had probable cause to search it. As we have held earlier, after the initial stopping and boarding a vessel the marine patrol must have probable cause before conducting any further search or inspection. Tingley v Brown; Hill v State. With respect to safety inspections, the legislature has decided that not even the initial boarding may be conducted without consent or probable cause.[1] 371.58, Fla. Stat. (1977). In this case consent was freely given to board the vessel and to look in the icebox.

However, respondents did not consent to any further search, as was clearly indicated when they asked Officer Soli if she had a search warrant. Villari v State, 372 So. 2d 522 (Fla. 1st DCA 1979). Respondents' subsequently opening the forward hatch for Officer Soli did not constitute consent since they were told that a search warrant was not needed. See Taylor v State, 355 So. 2d 180 (Fla. 3d DCA, cert. denied, 361 So.2d 835 (Fla. 1978).

Without consent, the officers were precluded from further searching the vessel unless they had probable cause to believe that a crime was being or was about to be committed. Tingley v Brown. Probable cause cannot be based on mere suspicion. Bailey v State, 319 So. 2d 22 (Fla. 1975). There must be facts showing a probability of criminal activity. State v Smith, 233 So. 2d. 396, (Fla. 1970). In this case the

[1] 371.58 Safety inspections; qualified. -- No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occurred or is occurring.

facts were insufficient to show that respondents were probably committing or about to commit a crime. That respondents could not produce a registration certificate and that, although they said they were going to the Bahamas, their icebox did not contain ice may have been suspicious circumstances but did not constitute probable cause. That respondents inquired about a search warrant is irrelevant in determining whether the officers had probable cause. Since the officers lacked probable cause, their search of the vessel was unreasonable and the evidence they obtained should have been suppressed.

We disapprove the district court's decision insofar as it held that the initial stop was unreasonable and required probable cause. However, since we hold that the subsequent search was unreasonable because it was not based on probable cause, we approve the district court's reversal of the confiction. In accordance with the mandate of the district court of appeal, this cause is remanded to the circuit court with directions to discharge the defendants.

It is so ordered.

facts were insufficient to show that respondents were probably committing or about to commit a crime. That respondents could not produce a registration certificate and that, although they said they were going to the Bahamas, their icebox did not contain ice may have been suspicious circumstances but did not constitute probable cause. That respondents inquired about a search warrant is irrelevant in determining whether the officers had probable cause. Since the officers lacked probable cause, their search of the vessel was unreasonable and the evidence they obtained should have been suppressed.

We disapprove the district court's decision insofar as it held that the initial stop was unreasonable and required probable cause. However, since we hold that the subsequent search was unreasonable because it was not based on probable cause, we approve the district court's reversal of the confiction. In accordance with the mandate of the district court of appeal, this cause is remanded to the circuit court with directions to discharge the defendants.

It is so ordered.

TRANSCRIPT OF TESTIMONY OF JENNA SOLI
AT HEARING ON MOTION TO SUPPRESS
EVIDENCE AND CONFESSION IN THE CIRCUIT
COURT OF THE 16TH JUDICIAL CIRCUIT IN
AND FOR MONROE COUNTY, FLORIDA

Page 37 - 39

Q. So, you didn't have any reason to believe that that specific vessel was involved in any trap robbing, right?

A. No.

Q. What was your purpose in going aboard the vessel?

A. I felt that I was doing as a Marine Patrol Office Officer in checking boats that were on the water and the boat couldn't produce the registration and I went aboard the boat for routine safety check.

Q. That's why you went aboard the vessel to perform that routine safety inspection check at midnight, is that why you went aboard this vessel?

A. It doesn't make any difference what time it is.

Q. Okay, I just want to know specifically why you went aboard the San Rafael.

A. In my mind?

Q. Yes.

A. To me, I was just doing my job, I had no suspicions when I went aboard the boat, the gentlemen could not produce the paper, I went on board the boat.

Q. When the gentleman could not produce the registration papers, did you or anyone else place him under arrest at that time?

A. No, sir.

Q. When you went in the wheelhouse, you were looking for what, the papers?

A. I would have helped them look further for papers, we didn't dig in anywhere.

Q. You went aboard but you didn't actually look for any. Did you or any other officer place the gentleman under arrest for any safety violation, any lack of safety equipment?

A. Not as of that point.

Q. At any point, did you?

A. No.

Q. You didn't make any arrest aboard the San Rafael for lack of safety devices.

A. I didn't do a search for safety equipment, I just said I didn't see any in plain view.

Q. Okay, but that was your purpose on going on board, though.

A. There's many reasons why I went on board.

Q. I asked you why you went on board, did you perform a search for safety devices?

A. No, I didn't search for them.

Q. Were you looking for safety devices or documentation papers when you looked in the ice box on the back of the boat?

A. No, sir, I was looking for any kind of seafood products that he might have aboard the boat.

Q. Hadn't the captain told you that there was no such seafood on board?

A. Well, often people do that and we still say we'd like to see your catch.

Q. Okay, is that why you were searching the vessel looking for safety, I mean, looking for seafood products, was that your purpose in searching the vessel?

A. I asked him if I could see.

Q. What was your purpose of searching the vessel?

A. I didn't feel like I was searching, I was doing a routine check.

Q. For what?

A. For any kind of seafood product he might have had on board, in my mind, I was fresh out of school, I was checking the boat and doing my job.

Q. What about when you looked in the grocery box? Were you looking for seafood products or papers then?

A. Not for papers, for seafood products, yes.

Q. Where the groceries were, okay.

A. It was a regular catch box that is why I asked him if I could see it.

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IN THE SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,

Petitioner-Appellant

No. 81-2318

vs

CONSTANTINO CASAL and OMAR GARCIA

Respondent-Appellee

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, CONSTANTINO CASAL, asks leave to file the attached Brief in Opposition without the prepayment of costs and to proceed in forma pauperis. Respondent's affidavit in support of this motion is attached hereto and made a part hereof and marked Exhibit "A".

Constantino Casal
CONSTANTINO CASAL

I HEREBY CERTIFY that a Motion for Leave to Proceed in Forma Pauperis has not been sought in any other Court. I also do hereby certify that a true and correct copy of the Motion For Leave to Proceed in Forma Pauperis and attached Affidavit was mailed this 16th day of July, 1982 to the Office of the Attorney General, Anthony C. Musto, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Fla 33128.

ARTHUR F. McCORMICK
Attorney for Respondent
7550 Red Road, Suite 203
South Miami, Fla. 33143
Phone: 305-665-4819

RECEIVED
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THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,

Petitioner-Appellant

No. 81-2318

vs

CONSTANTINO CASAL and OMAR GARCIA,

Respondent-Appellee

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, OMAR GARCIA, asks leave to file the attached Brief in Opposition without prepayment of costs and to proceed in forma pauperis. Respondent's affidavit in support of this motion is attached hereto and made a part hereof and marked Exhibit "A".

OMAR GARCIA

I HEREBY CERTIFY that a Motion for Leave to Proceed in Forma Pauperis has not been sought in any other Court. I also do hereby certify that a true and correct copy of the Motion for Leave to Proceed in Forma Pauperis and attached Affidavit was mailed this 14th day of July, 1982 to the Office of the Attorney General, Anthony C. Musto, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 920, Miami, Fla. 33128.

ARTHUR F. McCORMICK
Attorney for Respondent
7550 Red Road, Suite 203
South Miami, Fla. 33143
Phone:305-665-4819

EXHIBIT "A"

AFFIDAVIT

I, OMAR GARCIA, being first duly sworn according to law, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to repay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed?

Answer: No.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source?

Answer: I am a student and also self employed building lobster traps. I make about $250.00 to $300.00 per month.

3. Do you own any cash or checking or savings account?

Answer: No.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Answer: I own a 1981 Oldsmobile. It has a present value of approximately $8,000.00, but I owe that much on the automobile.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Answer: None

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Omar Garcia

OMAR GARCIA

EXHIBIT "A"

AFFIDAVIT

I, CONSTANTINO CASAL, being first duly sworn according to law, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed?

   Answer: Yes, I work as a fisherman for many persons on different boats. I earn approximately $300.00 per month.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source?

   Answer: No.

3. Do you own any cash or checking or savings account?

   Answer: No

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

   Answer: No

5. List the persons who are dependent upon you for support and state your relationship to those persons.

   Answer: None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Constantino Casal
CONSTANTINO CASAL

SWORN TO AND SUBSCRIBED to before me this 9th day of July, 1982

Maria Celia G. Casal
Notary Public

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT. 10 1983
BONDED THRU GENERAL INS. UNDERWRITERS

SWORN TO AND SUBSCRIBED before me this 8th day of July, 1982.

Notary Public

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT. 10 1982
BONDED THRU GENERAL INS. UNDERWRITERS

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-2318

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

BRIEF OF PETITIONER

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QUESTION PRESENTED FOR REVIEW

WHEN THE SUPREME COURT OF FLORIDA FOUND THAT THE STOP OF RESPONDENTS' BOAT FOR INSPECTIONS PURPOSES WAS VALID AND THAT RESPONDENTS WERE VALIDLY ARRESTED PRIOR TO THE HOLD OF THE BOAT BEING SEARCHED, DID THAT COURT INCORRECTLY FIND THE SEARCH OF THE HOLD INVALID WHEN IT WAS PROPER AS BEING INCIDENT TO ARREST, AS FALLING UNDER THE "CARROLL EXCEPTION" TO THE WARRANT REQUIREMENT AND AS AN APPROPRIATE INSPECTION FOR SAFETY REASONS?

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OPINIONS BELOW

Respondents' convictions were reversed by Florida's Third District Court of Appeal in Casal v. State, 375 So.2d 1077 (Fla. 3rd DCA 1979). The State obtained certiorari review by the Supreme Court of Florida, which approved of the district court's conclusion, although employing different reasoning, in State v. Casal, 410 So.2d 152 (Fla. 1982). The opinion of the district court on remand is reported as Casal v. State, 411 So.2d 1040 (Fla. 3rd DCA 1982).

JURISDICTION

The opinion of the Supreme Court of Florida issued January 14, 1982. Rehearing was denied March 15, 1982, and mandate issued that date.

The petition for writ of certiorari was filed June 17, 1982, and was granted

October 4, 1982. Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment, United States Constitution.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The Supreme Court of Florida, in State v. Casal, 410 So.2d 152 (Fla. 1982), set forth relevant facts as follows:

> While patrolling the Atlantic side of the Florida Keys at night, Officers Walker and Soli of the Florida Marine Patrol saw a fishing vessel then being operated by the respondents. Although the Marine Patrol had received several complaints from local fishermen that their traps were being raided, the officers initially had no suspicion that the operators of the vessel were engaged in illegal activity. Nevertheless, they pulled alongside the vessel and asked the captain to cut his engines. They then asked to see the boat's registration certificate which is legally required to be on board. See § 371.051(5), Fla.Stat. (1977). The captain, Omar Garcia, produced a tax receipt and some other documents but could not locate the registration certificate. Because the boats were banging along each other, Officer Soli asked permission to board the vessel. The respondents assisted her on board.
>
> Upon boarding Officer Soli accompanied the respondents to the cabin to help look for the registration certificate. She testified that the respondents seemed agitated

> and apprehensive insofar as they were looking at each other a lot. She then asked to look in their icebox. After being told that would be fine she opened the icebox and saw some rotten food but no ice. This seemed strange to her since the captain had earlier said that they were on their way to Cay Sal to go fishing. She reported this finding to Officer Walker who had maneuvered the Marine Patrol vessel a few feet away to keep it from bumping into respondents' vessel. Officer Soli then asked to look in the forward hatch. Captain Garcia asked if she had a search warrant. Overhearing this exchange Officer Walker told Garcia that they did not need a search warrant since they were not conducting a search and that he was under arrest for not having a boat registration certificate on board. Garcia then said there was no need to go further and that the boat was loaded with grass. Officer Walker called respondents over to the side of the boat and after advising them of their Miranda rights asked them to confirm what was just said by opening the front hatch for Officer Soli's inspection. When they did so she discovered several bales of Marijuana. 410 So.2d at 153.

Pretrial, Respondents moved to suppress the marijuana on the basis that the search was illegal since the officers had neither

probable cause to stop the vessel nor, having stopped the vessel, probable cause to search it. The trial court denied the motion. Respondents proceeded to trial and were convicted of violating § 893.03(1)(c), Fla.Stat. (1977) and § 893.13(1)(a), Fla.Stat. (1977). On direct appeal, the Third District Court of Appeal of Florida reversed, finding the stop to be invalid. Casal v. State, 375 So.2d 1077 (Fla. 3rd DCA 1979). The State obtained certiorari review in the Supreme Court of Florida. That court disagreed with the district court's conclusion regarding the stop and held it to be valid. Despite the validity of the stop, the court reasoned the marijuana should have been suppressed because the search was unlawful. In a split decision, it approved the district court's reversal of the convictions. State v. Casal, 410 So.2d 152 (Fla. 1982).

Justice Alderman and Justice McDonald, concurring in part and dissenting in part, found the stop to be valid and concluded that the search was valid as a search incident to the arrest and valid under the "Carroll exception" to the warrant requirement.

SUMMARY

The Florida Supreme Court in State v. Casal, 410 So.2d 152 (Fla. 1982), improperly held the search of the hold of the San Rafael, subsequent to Respondents' arrest, unreasonable under the Fourth Amendment where said search was justified as a search incident to a lawfully custodial arrest, a valid warrantless search under the "Carroll" exception, and a valid warrantless administrative "search."

The Florida Supreme Court ignored this Court's decisions in Chimel v. California,

395 U.S. 752 (1969) and New York v. Belton, 453 U.S. 454 (1981), where, as here, respondents were validly under arrest and the search of the vessel's hold was incident to said arrest. The contemporaneous warrantless search of the immediate area was justified by the fact that two marine patrol officers, after arresting Respondents, needed to secure said vessel and check for possible hidden weapons or other armed confederates. Since Respondents' arrests were not at issue but merely the scope of the search, New York v. Belton, supra, controls.

The court specifically concluded that the search subsequent to Respondents' arrests was not consensual, and therefore, violated the Fourth Amendment. This Court's decisions in Carroll v. United States, 267 U.S. 132 (1925) and United States v. Ross, ___ U.S. ___, 72 L.Ed.2d

572 (1982), justify the warrantless search herein. The marine patrol officers, based on Garcia's statements that the hold was filled with marijuana, acquired the requisite probable cause to search the San Rafael following Respondents, arrests. Not only did Garcia's volunteered statements equate to a consent to search but also provided the necessary probable cause under Ross, supra, to search the hold of the vessel.

These circumstances also justified Officer Soli's looking into the San Rafael's hold based on her authority under Florida law to inspect the vessel for registration certification, safety equipment and fishing permits and limits. A legitimate visual inspection was authorized in light of the State's regulation of boating and fishing in the coastal waters of Florida. Donovan v.

Dewey, 452 U.S. 594 (1981); Colonade Catering Corp. v. United States, 397 U.S. 72 (1970); United States v. Biswell, 406 U.S. 311 (1972).

ARGUMENT

A. SEARCH INCIDENT TO ARREST

A search of the person arrested and of the immediately surrounding area contemporaneous to a lawful custodial arrest not only results in an exception to the warrant requirement of the Fourth Amendment, but also is a "reasonable" search pursuant to the Fourth Amendment. United States v. Robinson, 414 U.S. 218 (1973).

In Chimel v. California, 395 U.S. 752 (1969), this Court announced that searches incident to a lawful arrest have long been considered valid due to the ever present need "to remove any weapon that [an arrestee] might seek to use in order to

resist arrest or effect his escape" or to prevent the concealment or destruction of evidence. 395 U.S. at 763.

In an effort to resolve the difficulty courts have discovered in applying the "Chimel" principle, this Court in New York v. Belton, 453 U.S. 454 (1981), set forth a "workable rule" that:

> Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

453 U.S. at 460. See also United States v. Martinez-Fuerte, 428 U.S. 543, 548 (1976) (upholding the search of a vehicle trunk after arrest of three occupants).

The search here is controlled by the principle announced in Belton, supra, in that the search was incident to Respon-

dents' arrest.[1] Respondents were placed under arrest for failure to have the proper boat registration aboard the San Rafael, a commercial-type fishing vessel.[2] Miranda

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[1]The validity of Respondents' arrests has not been questioned by Respondents in a cross-petition. The Florida Supreme Court held that the stopping of the San Rafael was not unreasonable under the Fourth Amendment, State v. Casal, 410 So.2d at 155. The question of whether the arrests were proper was not an issue before the Florida Supreme Court in State v. Casal, supra, nor specifically at issue before the Third District Court of Appeal in Casal v. State, 375 So.2d 1077 (Fla. 3rd DCA 1979). See Engle v. Isaac, ___ U.S. ___, 71 L.Ed.2d 783 (1982) and Abel v. United States, 362 U.S. 217, 230-232 (1960). Moreover, the historical facts as set forth by the Supreme Court of Florida in Casal negate any question as to the validity of the arrest. See Sumner v. Mata, 449 U.S. 539 (1981).

[2]Section 370.02(2), Fla.Stat. (1977), provides in part that the duties of the marine patrol are to regulate the operations of all fishermen and vessels of this state . . .

warnings were immediately read to Respondents and Officer Walker asked Respondents to "confirm what was just said (that the boat was loaded with marijuana) by opening the front hatch for Officer Soli's inspection." State v. Casai, 410

(cont. from previous page)
Section 370.021(5), Fla.Stat. (1977), provides that the marine patrol officers are law enforcement officers authorized with full power to investigate and arrest for any violation of the laws of Florida. Section 371.041, Fla.Stat. (1977), requires all motorboats to be registered within 10 days of purchase. Section 371.051(5), Fla.Stat. (1977), states in part that the "certificate of registration . . . shall be available for inspection on the boat for which issued whenever such boat is in operation." Section 37.162, Fla.Stat. (1977), provides in part that the purpose for registration is to "provide for a boat registration license fee and certificate so as to determine the ownership of boats which travel the waters of this state and to aid in the advancement of maritime safety." Lastly, pursuant to Section 371.65(5)(6), Fla.Stat. (1977), it is a misdemeanor to operate motorboat without a current registration.

So.2d 152, 153 (Fla. 1982).

In Belton, supra, this Court observed that the "validity of the custodial arrest of Belton has not been questioned . . ." 453 U.S. at 460 n.2. Similarly, sub judice, the issue revolves not on the validity of the arrest, but rather whether the search of the hold immediately following said arrest falls within the scope of Chimel. See Michigan v. DeFillippo, 443 U.S. 31 (1979).

As noted in the dissenting opinion by Justice Alderman relying on this Court's decision in Chimel:

> In the present case, there is no question that the search was conducted immediately upon arrest of the defendants, and the hold of the boat was easily accessible to the defendants. It is not inconceivable that the defendants may have had weapons hidden in the hold or that armed accomplices could have been hiding there, merely waiting an opportunity to surprise the officers and to thwart the arrest of defendants. Likewise, it is not

> inconceivable that defendants could have quickly reached the hold and attempted to destroy the evidence by throwing it overboard.

410 So.2d at 157.

This Court, in United States v. Chadwick, 433 U.S. 1 (1977) and United States v. Robinson, supra, held that an arresting officer will not be required to calculate the probability that weapons or destructible evidence may be involved. The occurrence of a lawful custodial arrest, singularly authorizes a warrantless search. Michigan v. DeFillippo, supra.

Equally here, as in Belton, the search of the hold of the boat fell within the panorama of the arrestee's immediate control. The San Rafael was not in port but rather off the coast of Monroe County, Florida. The two marine patrol officers had placed Respondents under arrest for

violating Chapter 371, Fla.Stat. (1977), and Respondent Garcia had informed the officers that the hold contained marijuana.[3] Unlike Chambers v. Maroney, 399 U.S. 42 (1970), no delay occurred, rather the officers functioned responsibly in searching the hold for either weapons or

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[3] As observed in Belton, 453 U.S. at 461 n.5,

> It seems to have been the theory of the Court of Appeals that the search and seizure in the present case could not have been incident to the respondent's arrest, because Trooper Nicot, . . . had gained "exclusive control" of "the [the jacket] them. [Citation omitted.] But under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; . . .

other persons authorized specifically under Belton, supra. See Washington v. Chrisman, ___ U.S. ___, 70 L.Ed.2d 778 (1982). Indeed, the situation here presents a more compelling justification for the search incident to arrest since in Belton, supra, unlike here, the occupants were already taken from the car.

It is also significant to note that there is a distinct difference between the hold of a boat and a trunk of a car. Because of the nature of a vessel, the hold can be reached without leaving the vessel and without using a key to unlock the hold. "[S]ince the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the

infringement of any privacy interest the arrestee may have", 453 U.S. at 461, the search of the hold of the San Rafael was valid as incident to Respondents' arrest.[4]

B. "CARROLL EXCEPTION"

In Carroll v. United States, 267 U.S. 132 (1925), this Court established the automobile exception to the warrant requirement of the Fourth Amendment. The Court recognized that because of the movability of vessel and automobiles, exigent circumstances authorizes warrantless searches based on probable cause. In distinguishing warrantless searches of vehicles from searches of fixed structures,

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[4] See, however, United States v. Freeman, 660 F.2d 1030 (5th Cir. 1981), which held that the ice hold on a fishing vessel was public not private, and therefore, neither the captain nor the crew had an expectation of privacy.

the Carroll Court observed that it was not practicable to "secure a warrant because the vehicle [vessel or automobile] can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." 267 U.S. at 153. See Chambers v. Maroney, supra.

The question addressed in United States v. Ross, ___ U.S. ___, 72 L.Ed.2d 572 (1982), concerned the scope of a warrantless automobile search based on probable cause. Citing to Carroll v. United States, supra, Justice Stevens observed in Ross:

> In Carroll itself, the whiskey that the prohibition agents seized was not in plain view. It was discovered only after an officer opened the rumble seat and tore open the upholstery of the lazyback. The Court did not find the scope of the search unreasonable. Having stopped Carroll and Kiro on a public road and subjected them to the indignity of a vehicle search--which the Court found to be a reasonable intrusion on their privacy because it was

> based on probable cause that their vehicle was transporting contraband--prohibition agents were entitled to tear open a portion of the roadster itself. The scope of the search was no greater than a magistrate could have authorized by issuing a warrant based on the probable cause that justified the search. Since such a warrant could have authorized the agents to open the rear portion of the roadster and to rip the upholstery in their search for concealed whiskey, the search was constitutionally permissible.

72 L.Ed.2d at 589. See Texas v. White, 423 U.S. 67 (1975) and Michigan v. Thomas, ___ U.S. ___, 102 S.Ct. 2079 (1982).

The question, here, is not whether the marine patrol officers would have been permitted to search the ice hold, United States v. Ross, but rather, whether there was probable cause to justify the search.

The Supreme Court of Florida in State v. Casal, supra, concluded that there was no probable cause:

> In this case the facts were insufficient to show that respondents

> were probably committing or about to commit a crime. That respondents could not produce a registration certificate and that, although they said they were going to the Bahamas, their icebox did not contain ice may have been suspicious circumstances but did not constitute probable cause. That respondents inquired about a search warrant is irrelevant in determining whether the officers had probable cause. Since the officers lacked probable cause, their search of the vessel was unreasonable and the evidence they obtained should have been suppressed.

410 So.2d at 156.

The conclusion drawn by the majority is inexplicable in light of the fact that Respondent Garcia told the officers, prior to the search of the hold, that the boat was loaded with marijuana. Justice Alderman observed in his dissent, joined by Justice McDonald:

> Captain Garcia, shortly after having been arrested for failure to have a registration certificate on board, without any prompting by anyone or without any questions being asked, told the officers that the boat was loaded with marijuana. At that time the officers clearly had probable cause to believe that the defendants' boat was carrying marijuana. The boat itself was fully mobile, and the question of whether it could have been secured is irrelevant. Chambers v. Maroney.

410 So.2d at 156-157.

The Florida Supreme Court apparently viewed Captain Garcia's statement that "there was no need to go further and that the boat was loaded with grass," 410 So.2d at 153, not as a volunteered statement or consent to search but rather "merely a submission to the apparent authority of the

officer." Villari v. State, 372 So.2d 522 (Fla. 1st DCA 1979).[5]

Captain Garcia's statement was made contemporaneous to his arrest. In United States v. Watson, 423 U.S. 411 (1976), this Court noted that the "totality of the circumstances" serves as the standard to be considered in determining whether consent to search was granted following Watson's arrest. Moreover, mere custody was held

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[5]The First District Court in Villari v. State, supra, in a distinguishable decision, held that consent was not freely and voluntarily given:

> Up to the point of Villari's question, "Don't you need a search warrant to look at my personal belonging?" his actions constituted consent to the search. There is no question that he consented, upon reasonable request, . . . When appellant asked the foregoing question, however, he indicated lack of consent to any further search in that he questioned the officer's authority to search further without a warrant. The officer's response was evasive. . . . Villari's statement of "Unhuh" or "Okay" was merely acquiescence or resignation to Pease's statement.

372 So.2d at 523-524.

not enough to justify coerced consent.[6]

The circumstances surrounding Garcia's statement that marijuana was on board cannot be characterized as acquiescence to authority. Garcia simply volunteered a "statement against penal interest" after Officer Walker clearly informed Garcia that "they (the officers) did not have a search warrant since they were not conducting a search . . ." 410 So.2d at 153. See Scher v. United States, 305 U.S. 251, 254-255 (1938); Rawlings v. Kentucky, 448 U.S.

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[6] In Watson, 423 U.S. at 424, this Court found that Watson's will had not been "overborne" or his "capacity for self-determination critically impaired," where there were no overt acts or threats of force; no promises or indication of more subtle forms of coercion to flaw his judgment.

> He had been arrested and was in custody, but his consent was given while on a public street, not in the confines of the police station. Moreover, the fact of custody alone has never been enough in itself to demonstrate a coerced confession or consent to search. . . .

98, 107-109 (1980); Coolidge v. New Hampshire, 403 U.S. 443, 488-489 (1971); United States v. DeWeese, 632 F.2d 1267 (5th Cir. 1980).[7]

In Rawlings v. Kentucky, supra, this Court observed that in assessing whether a statement was the product of free will, a case by case review need be undertaken. Here, either, Garcia "consented" to the search or his volunteered statement provided probable cause to support the subsequent search.

Assuming a Fifth Amendment issue arose based on Garcia's statement, the historical facts[8] reveal that contemporaneous to

---

[7]The circumstances of Garcia's statement cannot be viewed in the same context as those found in Bumper v. North Carolina, 391 U.S. 545 (1968). See Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

[8]See Edwards v. Arizona, 451 U.S. 477 (1981).

Garcia's arrest and statement, Miranda warnings were given and "without any prompting by anyone or without any questions being asked, [Garcia] told the officers that the boat was loaded with marijuana." 410 So.2d at 156-157.

Miranda v. Arizona, 384 U.S. 436 (1966), provides that an element of interrogation is preliminarily required in order to invoke Miranda protections.[9] The voluntariness of Garcia's statement is

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[9] See, however, United States v. Baker, 641 F.2d 1311 (9th Cir. 1981) and United States v. Warren, 578 F.2d 1058, 1070 (5th Cir. 1978), cert.denied, 446 U.S. 956 (1980), wherein the courts have held the Coast Guard boardings do not create a custodial situation requiring Miranda warnings before interrogation.

beyond peradventure.[10] As noted in Miranda, 384 U.S. at 478:

> Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. . . There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession on any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment . . .

Moreover, in Rhode Island v. Innis, 446 U.S. 291 (1980), this Court defined

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[10]The only rationale for not considering the admission as probable cause might be the fact that Officer Walker had just told Respondents that they did not need a search warrant. The officer stated "that they did not need a search warrant since they were not conducting a search." (A 17-18). Respondents could not have been under the impression that the boat would be searched anyway, rather, they were plainly told exactly the opposite, that the officers were not going to search. Under these circumstances, Respondent's statement was a volunteered spontaneous admission against penal interest.

"interrogation" for Fifth Amendment purposes as being not only express questioning, but also "any words or actions on the part of the police" that the police "should know are reasonably likely to elicit an incriminating response" from a suspect. This Court further observed that:

> A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they <u>should have known</u> were reasonably likely to elicit an incriminating response.

446 U.S. at 301-302 (emphasis original).

Viewing the case in this light, neither Officer Walker nor Officer Soli placed Garcia in a circumstance that would characterize their activity as actions they

should have known would elicit said statement.[11] See United States v. Mendenhall, 446 U.S. 544 (1980) and United States v. DeWeese, supra.

Once on board, Respondent Garcia's "statement against penal interest" provided the requisite probable cause to search as much as the odor of marijuana or marijuana in plain view would have. United States v. Clark, 664 F.2d 1174 (11th Cir. 1981).

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[11] The record supports this contention in that the voluntariness of said admissions was never really challenged. Rather, Respondents maintained on direct appeal that the initial stop was illegal, and therefore, the admissions were fruits of the illegal stop. In State v. Casal, supra, the Supreme Court found the stop to be valid. The subsequent search of the hold was held illegal because no consent was obtained. 410 So.2d at 155-156.

Exigency was created by the inherent mobility of the vessel and the possibility it might escape the two marine patrol officers detaining it, the conditions present the early morning of September 18, 1977, and the possibility that the two men were not alone on the vessel or that they might have secret arms aboard, causing danger to the officers if the vessel was not immediately secured. The search of the San Rafael was justified under the Carroll exception to the warrant requirement of the Fourth Amendment. See Brinegar v. United States, 338 U.S. 160 (1938) and United States v. Kleinschmidt, 596 F.2d 133 (5th Cir. 1979).

C. INSPECTION SEARCH

In Donovan v. Dewey, 452 U.S. 594, 598 (1981), this Court concluded that although the proprietor of commercial property is protected from unreasonable intrusions by governmental authorities, "legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment."

This Court expressly recognized exceptions to the warrant requirement for federal inspections in certain areas as federally licensed liquor dealers, Colonade Catering Corp. v. United States, 397 U.S. 72 (1970); federally licensed gun dealers, United States v. Biswell, 406 U.S. 311 (1972); and federally regulated stone

quarry operations, Donovan v. Dewey, supra.[12]

Florida's legislature has similarly enacted legislation authorizing administrative searches or authorized inspections for specific industries.[13] In enacting legislation for the regulation of boating and fishing, § 370.02, Fla.Stat. (1977), provides that the Florida Marine Patrol as the law enforcement arm of the Department

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[12] See Rush v. Obledo, 517 F.Supp. 905, 910 n.7 (N.D. Cal. 1981), for a detailed list of post-Marshall v. Barlow's, Inc., 436 U.S. 307 (1978) cases which have upheld warrantless administrative searches. United States v. Raub, 637 F.2d 1205 (9th Cir. 1980).

[13] Bludworth v. Arcuri, 416 So.2d 882 (Fla. 4th DCA 1982) (inspections for records of junk dealers); Reynolds v. State, 383 So.2d 228 (Fla. 1980); Federman v. State Dept. of Business Regulation, Div. of Para-Mutual Wagering, 414 So.2d 28 (Fla. 3rd DCA 1982) (inspection of racetrack vendors); Tingley v. Brown, 380 So.2d 1289 (Fla. 1980) (inspection for undersize crawfish); Gluesenkemp v. State, 391 So.2d 192 (Fla. 1980) (agricultural inspections);

of Natural Resources, is authority to regulate "all fishermen and vessels . . . engaged" in the taking of fishery resources "to issue licenses" and all other duties and operations directed to "the broad objective of managing such fisheries in the interest of all people . . ." Concomitantly, all motorboats shall be registered (§ 371.041, Fla.Stat. (1977)); such registration shall be on board and available (§ 371.051(5), Fla.Stat. (1977)); and it is a misdemeanor not to have a current registration (§ 371.65(5), Fla.Stat. (1977)).

Section 371.58, Fla.Stat. (1977), specifically provides for safety inspections of all boats and reads in material part:

(cont. from previous page)
and Hill v. State, 238 So.2d 608 (Fla. 1970) (regulates taking of saltwater fish).

> When the owner of operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occurred or is occurring.

Officers Walker and Soli, in the early morning hours on September 18, 1977, stopped the San Rafael in the Atlantic waters off Monroe County, Florida (A 12-13, 53-54, 62-63). The officers' stated purpose for stopping the vessel was to conduct a check of the vessel's registration papers and safety equipment (A 14, 55). No registration papers were produced (A 27, 34, 56).

Officer Soli received permission to board the vessel in order to speak with Respondents and assist in locating the registration papers and to make a safety

inspection of the boat (A 16, 23, 56-57, 59-60, 70). Respondents were subsequently arrested for not carrying registration papers aboard the vessel (A 18, 61). Respondent Garcia then informed the officers, "Well, there is no need to go any further, the boat is loaded with grass." (A 18, 43, 60). Miranda warnings were immediately provided and Garcia again stated the vessel was carrying marijuana (A 18, 61). Officer Soli, with the assistance of Respondents, inspected the forward hold where large bales of marijuana were revealed (A 20-21, 84).

The validity of the initial stop of the San Rafael is not in question.[14] Moreover,

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[14]The Florida Supreme Court in State v. Casal, supra, citing to United States v. Martinez-Fuerte, 428 U.S. 543 (1976), found there was no less intrusive alternatives available to the marine patrol in carrying out their duties, in that:

Officer Soli obtained permission to board the San Rafael when Respondents could not produce their registration papers.[15] Officer Soli stated her purpose was to do her duty:

> I felt that I was doing as a Marine Patrol Officer in checking boats that were on the water and the boat couldn't produce the registration and I went aboard the boat for routine safety check. . . . To me, I was just doing my job, I had no suspicions when I went aboard the boat, the gentlemen could not produce the paper, I went on board the boat.

(A 66-67).

(cont. from previous page)

> Boat travel is not limited by fixed roadways. Unlike an automobile, a boat at sea can travel in any direction. Even in harbors where there are channels which boats must follow, it would be impossible to establish a checkpoint on the water since boats cannot come to a complete stop and line up behind each other on the water as cars can on roads.

410 So.2d at 155.

[15] See § 371.58, Fla.Stat. (1977).

Once consensually on board, Officer Soli had the authority to inspect the vessel for safety equipment and check for fishing permits. The inspection encompassed those areas on the San Rafael which were within the scope of the marine patrol's responsibilities to inspect, to-wit: the icebox and the forward hold.[16]

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[16]The facts reveal that Garcia consented to the search of the icebox (A 58), where Officer Soli found no ice and rotten food. 410 So.2d at 153. Her inspection of the forward hold occurred after Respondents were placed under arrest. See United States v. Freeman, 660 F.2d at 1034, wherein the court observed that an ice hold or fish hold is a public not private area of a vessel and within the area to be inspected. United States v. DeWeese, 632 F.2d at 270-271.

See also United States v. Tsuda Maru, 470 F.Supp. 1223, 1229-1230 (D. Alaska 1979).

In United States v. Martinez-Fuerte, 428 U.S. 543 (1976), this Court made it abundantly clear that neither probable cause nor reasonable suspicion was necessary in order to conduct a stop and legitimate visual inspection of a vehicle because such would be totally impractical to protect the government's interests.

Obviously if the state and federal governments can require a particular type of automobile to stop or check for registration on a boat, they can and may exact laws to enforce that governmental activity.

The inspection of the forward hold of the San Rafael falls within Florida's version of the Biswell-Colonade exception.[17] See United States v. Raub,

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[17] Section 371.62, Fla.Stat. (1977), specifically provides that it is the legislative intent to uniformly license boats throughout the state and:

637 F.2d 1205 (9th Cir. 1980).

In United States v. Piner, 608 F.2d 358 (9th Cir. 1979), the Ninth Circuit assumed, arguendo, that the governmental interest in securing compliance with safety regulations did outweigh the intrusion or privacy encountered in the ordinary boarding. Although the court reversed said case based on those particular facts, the court concluded:

(cont. from previous page)
to provide for a boat registration license fee and certificate so as to determine the ownership of boats which travel the waters of this state and to aid in the advancement of maritime safety.

> If the purpose of the random stop is to ascertain and discourage non-compliance with safety regulations, we see no reason why this purpose cannot sufficiently be accomplished . . .

608 F.2d at 361.

In United States v. Hilton, 619 F.2d 127, 133 (1st Cir. 1980), that court explained the reasons why Delaware v. Prouse, 440 U.S. 648 (1979) did not apply to vessels. The court's reasoning aptly expounds Florida's concerns and needs in conducting inspections:

> We believe the limited intrusion represented by a document and safety inspection on the high seas, even in the absence of a warrant or suspicion of wrongdoing, is reasonable under the fourth amendment. While not devoid of protection under the fourth amendment, the ordinary vessel, like an automobile, carries with it a lesser expectation of privacy than a home or office. [Citations omitted.] And even more than cars, vessels are inherently mobile. The oceans are the highways of the world. Vessels off our coasts may be from anywhere on any mission. They may easily lose themselves on the trackless waters. The government's interests in being able to identify

> craft off the coasts are of major importance; to secure those interests the government must have a limited right to detain and inspect. The government's interests in being able to conduct discertionary safety inspections of its flag vessels have a similar degree of importance. . . .

619 F.2d at 131.

The importance of the fishing and boating industries in Florida has spurred the Florida legislature to provide the Florida Marine Patrol with authority to stop and board a vessel (with consent or probable cause) and inspect for registration papers, safety equipment, and fishing permits and limits. The state's interest is not merely limited to insuring safety on the high seas but also to maintaining a regulatory scheme essential to a state such as Florida with a vast coastline, used for pleasure and commercial boating and fishing. Inspections following lawful boardings are crucial because most

safety devices in question and registration documents are not visible to a passing vessel. Therefore, in order to provide an effective deterrent to errant boaters and limit violations of safety requirements, unannounced inspections of boats in use are essential.

Here, Officer Soli lawfully boarded the San Rafael. Her inspection for safety equipment and documents reasonably led her to the forward hold where ice and fish would normally be kept. When the lid was raised, she smelled the aroma of marijuana and saw large bales of marijuana (A 84). At that instant she had the requisite probable cause to search the entire boat

for contraband. United States v. Clark, 664 F.2d 1174 (11th Cir. 1981).[18]

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[18]Alternatively, as noted by the Florida Supreme Court, the "suspicious circumstances", 410 So.2d at 156, were adequate to provide the requisite inference of probable cause to make an inspection for safety violations and fishing permits. Camara v. Municipal Court, 387 U.S. 523 (1967) and Marshall v. Barlow's Inc., 436 U.S. at 320. See Wigfall v. State, 323 So.2d 587 (Fla. 3 DCA 1975).

CONCLUSION

The actions of Officer Walker and Officer Soli fell within the prescribed exceptions to the Fourth Amendment warrant requirement in that the search of the San Rafael's hold was incident to a lawful custodial arrest; fell within the "Carroll" exception, and at the very least, was a valid administrative inspection authorized by state statute.

The Florida Supreme Court's decision in State v. Casal, supra, is irreconcilable in light of the facts and decisional law applicable. Without regard for the marine patrol's efforts in scrupulously adhering to the mandates of this Court, the Florida Supreme Court disregarded the volunteered statement against penal interest of Respondent Garcia and concluded that the search of the hold was not consensual because the officers lacked probable

cause. This erroneous and narrow application of the Fourth Amendment warrant requirement exception must not be countenanced.

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No. 81-2318

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF FLORIDA,
Petitioner,

v.

CONSTANTINO CASAL and OMAR GARCIA,
Respondents.

On Writ Of Certiorari To The Supreme Court Of Florida

BRIEF OF RESPONDENTS

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QUESTIONS PRESENTED FOR REVIEW

I. IS THE FLORIDA MARINE PATROL LAWFULLY PERMITTED TO MAKE A RANDOM STOP OF A MOTOR VESSEL THAT IS NOT OBSERVED TO BE VIOLATING ANY LAW NOR TO BE ENGAGED IN ANY SUSPICIOUS ACTIVITY WHEN THE PURPOSE OF STOPPING THE MOTOR VESSEL IS TO CHECK IF THE BOAT HAS ITS REGISTRATION PAPERS ON BOARD?

II. WAS THE FLORIDA MARINE PATROL PROHIBITED BY STATUTE FROM SEARCHING THE MOTOR VESSEL?

III. IF THE FLORIDA MARINE PATROL WAS PROHIBITED BY STATUTE FROM SEARCHING THE MOTOR VESSEL, WAS THEIR SEARCH CONSENTED TO AND THEREFOR AUTHORIZED?

IV. EVEN THOUGH THE SEARCH OF THE HOLD WAS PROHIBITED BY STATUTE, WAS THE SEARCH BY THE FLORIDA MARINE PATROL NONETHELESS MADE VALID AS BEING:

A. Incident To The Arrest, Or

B. A Carroll Exception, Or

C. An Appropriate Inspection For Safety Reasons?

V. IF THE STATE'S CASE AGAINST THE DEFENDANTS DEPENDED UPON EVIDENCE OBTAINED AS A RESULT OF AN UNLAWFUL SEARCH OR SEIZURE, SHOULD THAT INCRIMINATING EVIDENCE HAVE BEEN EXCLUDED BY THE TRIAL COURT?

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INTRODUCTION

The Petitioner is the State of Florida. The Respondents are CONSTANTINO CASAL and OMAR GARCIA. The parties will be referred to in this Brief as they stood in the Trial Court. All references to the Record on Appeal will be by the symbol "R". The symbol "T" will designate the Transcript of the Trial. All reference to the Transcript of a Motion to Suppress Evidence and Confession will be designated by the symbol "M".

OPINIONS BELOW

The Defendants were both found guilty by the Circuit Court of Monroe County, Florida of the offenses of being in possession of more than 100 pounds of marijuana and the importation of marijuana. The Defendants' convictions were reversed by Florida's Third District Court of Appeal in *Casal* v. *State* 375 So. 2nd 1077 (3rd DCA 1979). The Appellate Court's reversal was stated to be based upon the ruling of *Delaware* v. *Prouse*, 440 U.S. 648 (1979). The State petitioned and obtained a rehearing. Upon reconsideration by the Third District Court of Appeal the Court concluded that its opinion and judgment should be adhered to. The State obtained certiorari review by the Supreme Court of Florida which approved the decision by the Third District Court of Appeal to reverse the conviction of the Defendants, but in doing so concluded that the stopping of the vessel was permissible but the search that followed was unreasonable and not based on probable cause. *State* v. *Casal*, 410 So. 2nd 152 (Fla. 1982). The State filed a motion for rehearing which was denied by the Supreme Court of Florida. The opinion of the District Court on remand is reported as *Casal* v. *State*, 411 So. 2nd 1040 (Fla. 3rd DCA 1982).

JURISDICTION

From the decision of the Supreme Court of Florida, the State filed a Petition for Certiorari which was granted on October 4, 1982. Jurisdiction was invoked by the State pursuant to 28 U.S.C. § 1257 (3).

STATUTORY PROVISIONS INVOLVED

Florida Statute 370.021 (5) administration, rules, regulations of the Department of Natural Resources and the powers of officers. . . .

> "The executive director or any of the conservation officers shall have the authority, without warrant, to board, inspect, and search any boat, fishing appliances, storage or processing plant, fishhouse, spongehouse, oysterhouse, or any warehouse, building, or vehicle engaged in transporting any fish or fishery products. Such authority to search and inspect without a search warrant is limited to those cases in which the executive director or officers have reason to believe that fish or any saltwater products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rule promulgated under this law."

Florida Statute 371.58 Safety Inspections; Qualified

> "No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard, an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring."

Renumbered as Florida Statute 327.56.

Article I Section 12 of the Florida Constitution; Searches and seizures:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable

searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. *Articles or information obtained in violation of this right shall not be admissible in evidence.*"

Fourth Amendment of the United States Constitution.

"The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

STATEMENT OF THE CASE

On September 17, 1977 Officers Walker and Soli of the Florida Marine Patrol were on duty patroling the Atlantic Ocean off Sugarloaf Key in Monroe County. (M.30; T.42-43). They had heard that lobsters were being stolen from traps in that area, and they were looking for the thief. (M.4, 29). At approximately midnite to 1:00 a.m. of September 18, 1977 they came upon a motor vessel named the San Raffael. The boat was not being fished at the time and the officers had no reason to believe that fish were being caught on the boat or that fish were being sold in the State of Florida. (M.17). The San Raffael was underway at the time and was being lawfully operated. The persons on board were doing nothing consistent with what persons do who are robbing traps. It did not appear that they were even pulling traps. The police officers admittedly had no reason to believe that the San Raffael or the persons on board were involved in trap robbing. (M.16, 36, 37, 43). The weather condition was poor. The seas were rough. (M.5, 9; T.32). The police officers decided to stop the boat anyway. They slipped up behind the San

Raffael intending to surprise its occupants. The senior police officer instructed the junior officer not to turn the flood light on until they were approximately 50 feet from the San Raffael. (M.3, 29, 43: T.11). There were two men on board, OMAR GARCIA and CONSTANTINO CASAL, the Defendants in this case. The location of the boat at this time was 1 1/2 to 2 miles further out to sea than the Nine Foot Schol Light. (M.34). The police officers were uniformed. (T.12). Pursuant to the officers command, the San Raffael was brought to a stop. (M.4). The police officers brought their patrol boat along side the San Raffael and the boats pounded together in the heavy seas. (M.4, 5, 9; T.11). Although the purpose of the police officers in stopping the San Raffael was to check them to see if they were lobster thieves, they announced to the occupants of the San Raffael that they wanted to check their boat registration papers. (M.4, 5, 29, 30). Documentation papers and a receipt that taxes had been paid on the boat were produced. (M.5, 10). The officers were told by GARCIA, the person in command of the San Raffael, that there were no registration papers on board. (M.10, 30). While this conversation with reference to the registration papers was going on, the boats were being thrown together by the heavy seas. (M.5, 9; T.32). Officer Soli then asked permission to board the San Raffael and one of its occupants helped her when she climbed aboard. (M.5, 30). Although Officer Soli did not see or have reason to believe that this vessel either fished in Florida waters or sold fish in Florida, and although she was told that the vessel was used for fishing in the Bahamas where it was in route to at the time it was stopped, Officer Soli intended to search the vessel and immediately embarked upon that search upon boarding the vessel. (M.38, 39). She didn't board the vessel to check for papers or safety equipment as is contended by the State of Florida in its Brief to this

Court. (M.38, 39). She started the search by going into the wheel house. (M.6). She then opened and searched the grocery box. (M.6). This was followed by a search of the cabin. (M.6). Nowhere in the records is there an indication that a consent was requested or that a consent was given for the search of the wheel house, grocery box and the cabin. Officer Soli then asked for permission to search the icebox which permission was granted. (M.32). She had one thing in mind and that was to search the main fishbox. (M.42). She said to GARCIA "I'd like to check your forward hold." GARCIA asked Officer Soli if she had a search warrant. Officer Soli responded by saying "No, I don't have any search warrant, but I would like to see what you have, you know, what seafood products you have. I'd like to check your forward catch box." GARCIA kept asking Officer Soli if she had a search warrant and Officer Soli kept answering his question the same way. GARCIA refused to permit the continued search without a search warrant. (T.17, 18). Officer Walker upon hearing this told GARCIA that they did not have a search warrant, they did not need a search warrant, they were not searching the boat, and that he was placing them under arrest for failure to carry the registration papers. (T.34). After being arrested GARCIA said "there is no use of you going any further. There's grass aboard." (M.32, 44, 45). Officer Walker read the Miranda rights in english. GARCIA understood english and CASAL did not. (M.7, 8, 9). Officer Walker then asked GARCIA what was on board and GARCIA told him. (M.8). The Defendants were asked to lift the hatch so that Officer Soli could look inside the fish hold. They did and for the first time Officer Soli saw and smelled the marijuana. (M.45). The fishing vessel was taken to Key west. CASAL was read his rights in Spanish and he then admitted to knowing that marijuana was on board. (T.59).

On September 26, 1977 the Defendants were charged by information with one count of possession of more than 100 pounds of marijuana, and one count of importation of marijuana. (R.1-3) Both of the Defendants entered pleas of not guilty to both of the counts and demanded trials by jury. (R.4). Prior to trial the Defendants filed a Motion to Suppress as Evidence the marijuana which was seized by the State of Florida. The Defendants also filed a Motion to Suppress as Evidence certain oral statements made by the Defendants. (R.18-19, 21-22). Prior to trial the Court had an evidential hearing on those Motions and denied them. (R.20; M.1-60).

A jury trial on the case was commenced on September 20, 1978. (T.1). The trial was concluded the following day on September 21, 1978 at which time both of the Defendants were found guilty as charged. (R.23-25). On November 21, 1978 OMAR GARCIA was sentenced to five (5) years in the State Correctional System with the recommendation that he be assigned to the youthful offender program. (R.30-31). On that same date, CONSTANTINO CASAL was sentenced to three (3) years in the State Correction System. (R.28-29).

Both of the Defendants filed Notices of Appeal. (R.32). Briefs were filed by all of the parties and an Oral Argument was had before the Third District Court of Appeal. On August 14, 1979 the Appellate Court did render its written opinion holding that the stopping of the Defendants' vessel was improper in view of the fact that the police officers admittedly had no suspicion, founded or otherwise, that those aboard were engaged in any unlawful activity but simply made the stop to check the vessel's registration papers. The Court ruled that the Motion to Suppress as Evidence the contraband which was seized as a result of the improper stop should have been granted.

The Judgment was therefore reversed and the cause remanded with directions to discharge both of the Defendants. *Casal* v. *State*, 375 So.2nd 1077 (Fla. 3rd. DCA 1979). The Appellate Court in applying the United States Supreme Court case of *Delaware* v. *Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed. 2nd 660 (1979) reasoned that there is no basis for distinguishing between automobiles and boats in applying the Fourth Amendments proscription of unreasonable searches and seizures. On August 28, 1979 the State filed a Motion for a Rehearing. Briefs were filed by both of the parties and thereafter an Oral Argument was had. On November 6, 1979 the Appellate Court entered its Final Order concluding that its Opinion and Judgment filed on August 14, 1979 should be adhered to. (R.42).

The State of Florida invoked the certiorari jurisdiction of the Supreme Court of Florida on November 28, 1980. The Supreme Court of Florida accepted certiorari jurisdiction and on January 14, 1982 did render its opinion approving the Third District Court's reversal of the conviction. Its reasoning, however, differed from the Third District Court. The Supreme Court of Florida found that the initial stopping of the vessel by the Florida Marine Patrol was reasonable, but it also found that the subsequent search was unreasonable because it was not based on probable cause. *State* v. *Casal*, 410 So.2nd 152 (Fla. 1982).

SUMMARY

No statutory authority existed permitting the Florida Marine Patrol to stop a vessel to inspect its papers. The Defendants' vessel was documented and the Marine Patrol Officers had no reason to believe that it had been fishing in Florida waters or that it sold seafood products

in Florida. Although this was true, the Marine Patrol Officers nevertheless wanted to search the vessel. This they did and when GARCIA attempted to stop what appeared to him to be an unlawful search by asking the Marine Patrol Officer if she had a search warrant, the Marine Patrol Officer announced that a search warrant was not needed and that the Defendants were under arrest. With this GARCIA admitted that the forward hold contained marijuana which was proven to be true by the follow-up search. The acts of the Florida Marine Patrol in boarding and searching the Defendants' vessel without a search warrant were prohibited by Florida Statute 370.021(5) unless the Marine Patrol Officer had reason to believe that fish or saltwater products were taken or kept for sale in violation of the laws of the State of Florida. It should be noted with reference to the Marine Patrol Officers assertion that the Defendants were under arrest for failing to have registration papers, that no citation or other legal proceeding was initiated by the State in this regard. The sole charges against the Defendants were those pertaining to the marijuana.

The Judgment of the Florida Supreme Court in *State* v. *Casal*, 410 So. 2nd 152 (Fla. 1982) was correct in that it approved the Third District Court's reversal of the Defendants' conviction. It did this even though it refused to apply this Court's decision in *Delaware* v. *Prouse*, 440 U.S. 648 (1979) and the 9th Circuit Court of Appeals cases in *United States* v. *Piner*, 608 F. 2nd 358 1979) and more recently in *United States* v. *Watson*, 678 F. 2nd 765 (1982). It nevertheless arrived at the proper Judgment by concluding that the subsequent search was not consented to and was not based on probable cause. The evidence obtained as a result of this unlawful search was not admissible in evidence by virtue of Article I, § 12 of the Florida Constitution.

ARGUMENT

I

THE FLORIDA MARINE PATROL IS CONSTITUTIONALLY PROHIBITED FROM MAKING A RANDOM STOP OF A MOTOR VESSEL THAT IS NOT OBSERVED VIOLATING ANY LAW NOR IS IT ENGAGED IN ANY SUSPICIOUS ACTIVITY WHEN THE PURPOSE OF STOPPING THE MOTOR VESSEL IS TO CHECK THE VESSEL'S PAPERS.

This question addresses the Court to one of the fundamental rights of all citizens. Article I Section 12 of the Florida Constitution prohibits unreasonable searches and seizures as does the Fourth Amendment to the United States Constitution. In applying these constitutional protections to the case at hand, the Court's attention is directed to the factual setting at the time and place of the stopping of the San Raffael. The place was several miles off shore from Sugarloaf Key, a remote area of the Florida Keys. It was midnight and the weather conditions were poor with the seas rough when the Florida Marine Patrol first observed the San Raffael. By all outward appearances it was merely another vessel underway. The Marine Patrol Officers had no probable cause to believe that the occupants of the San Raffael were engaged in any form of criminal activity. The officers admitted that they had no suspicion of any kind that the occupants of the San Raffael had or were violating the law in any way. Nevertheless the Florida Marine Patrol Officers elected to make a random check of the San Raffael. With the cover of darkness and rough seas they approached the San Raffael from its stern intending to escape detection. When they were within 50 feet of the San Raffael they suddenly turned their flood light on and directed the beam into the cockpit of the Defendants' boat. The Marine Patrol boat then drew alongside the San Raffael and Officer Walker commanded the helmsman of the San

Raffael to take the boat out of gear. Both boats were then side by side being thrown into one another by the rough seas. These multi ton vessels under such conditions are apt to cause not only extensive damage to one another, but the risk of injury and loss of life is also eminent. The purpose for this hazardous undertaking was the hope that the officers might by chance find the thief who was stealing lobsters from other fishermen's traps. The pretext given by the officers for stopping and detaining the Defendants was to check their registration papers.

What was the source of the police officers assumed authority to stop the San Raffael? They had no reason to believe or even a suspicion of any wrong doing. Their pretext justification for stopping the San Raffael was to see their registration papers. This was a documented vessel. (M.5). The San Raffael was therefore excluded from the requirement of registration under Section 371.051(1) because by definition a "motorboat" means any undocumented vessel propelled by machinery. (See Section 371.021(2), Fla. Stat.) It cannot be contended by the State of Florida that the San Raffael was required to be numbered pursuant to the requirements of Section 370.06(1). The evidence was that the officers never saw the San Raffael fish in Florida waters nor had they ever seen or heard of its catch being sold in the State of Florida. Instead they were informed that the boat fished in the Bahamas. (M.17, 18). Even if we are to assume that the San Raffael was required to be numbered, which it was not, does Section 371.051(4), Fla. Stat. requiring that the Certificate of Registration be available on board for inspection authorize the officers to stop the San Raffael. In *Delaware* v. *Prouse* 440 U.S. 648, 99 S. Ct. 1391, 59 L.Ed. 2nd 660, (1979) the Supreme Court concerned itself with the stopping of an automobile and the detention of

the driver in order to check the driver's license and the registration of the automobile. The State of Delaware had a statute in force at the time that Prouse was arrested which was similar to Florida's Statute regarding the boat registration papers to be on board and available for inspection. 21 ¶ 2721(b), Delaware Stat. provided as follows:

> "The licensee shall have such license in his immediate possession at all times when driving a motor vehicle and shall display the same upon demand of a uniformed police officer, justice of the peace, peace officer or motor vehicle inspector."

Florida Statute 371.051(4) regarding boat registration papers reads as follows:

> ". . . The Certificate of Registration shall be pocket-size and shall be available at all times for inspection on the motor boat for which used, whenever such motor boat is in operation."

Neither the Delaware Statute nor the Florida Statute gave statutory authority to a police officer to stop any or every vehicle or boat to determine if the license or registration papers were required and if they were if the operator had those papers.

The Supreme Court of the United States in commenting upon the licensing requirement stated as follows:

> "When there is no probable cause to believe that a driver is violating any one of the multitude of applicable traffic and equipment regulations—nor other articulable basis amounting to reasonable suspicion that the driver is unlicensed or his vehicle unregistered—we cannot conceive of any legitimate basis upon which a patrolman could decide that stopping a particular driver for a spot check would be more productive than stopping any other driver. This kind of standardless and unconstrained discre-

> tion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some entent."

The physical and psychological intrusion found to exist in the Prouse case could not begin to compare with the intrusion that occurred in this case. In the Prouse case the Defendant's automobile was stopped at approximately 7:20 p.m. on the highway in New Castle County, Delaware. In the case at bar the Defendants were stopped in the middle of the night several miles off a remote area of the Florida Keys when the weather conditions were adverse and the sea rough. The State of Florida in its Brief, both in the Statement of Fact as well as its arguments, assumes that the police officers stopped the San Raffael for the purposes of checking the registration papers and safety equipment aboard. The reason it assumes that the officers stopped the San Raffael to also conduct the safety check is because of a need to justify the stop. At the time of the hearing on the Defendants' Motion to Suppress the Evidence, Officer Walker testified that he stopped the San Raffael to check the registration papers. (M.4,5). Officer Stretcher, a/k/a Ginny Soli, on direct examination testified that they stopped the San Raffael and informed the Defendants that they wished to check their registration papers. (M.30). She then went on to testify under direct examination that when she boarded the vessel she was also conducting a safety check of the boat. (M.31). However on cross examination she admitted that she did not go aboard for the purposes of conducting a check of safety equipment. She further admitted that she in fact did not conduct a safety check. She was looking for seafood. (M.38, 39). Such a random stop of a motor vessel to check its papers cannot be justified by the marginal contribution that may be made by such a spot

check to determine if the registration papers or documentation are aboard. Every occupant of every boat in Florida waters would be subject to a seizure at the unbridled discretion of law enforcement officials if such were the rule.

Except where there is articulable and reasonable suspicion that the vessel is not registered, or that the vessel is subject to seizure or the occupants subject to arrest for violation of law, stopping a vessel and detaining it in order to check its registration papers is unreasonable and a violation of the Bill of Rights of both the Federal and State of Florida Constitutions. Stopping a vessel and detaining its occupants constitutes a seizure within the meaning of said constitutions even though the purpose of the stop is limited and the resulting detention brief. The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individuals constitutional rights against the interest intended to be promoted by the practice. The States interest in stopping a vessel and detaining its occupants as a means of checking to see if the registration papers or documentation papers are on board does not outweigh the intrusion on the privacy and security of the occupants of such vessels when they are stopped at random at the unbridled discretion of the Marine Patrol Officers. *United States* v. *Brignoni-Ponce*, 422 U.S. 873; *United States* v. *Martinez-Fuerte*, 428 U.S. 543. The minimal contribution to the interests of the State of Florida of requiring registration papers to be kept on board vessels which are required to be numbered cannot justify the seizure of every vessel in Florida waters, whether required to be numbered or not, and the arrest of the persons on board at the whimsical discretion of law enforcement officials. Individuals operating or traveling in vessels in Florida

waters do not lose all reasonable expectation of privacy simply because the vessel and its occupants are subject to government regulations. Those people are not stripped of all constitutional protection when they step from their homes on to the public sidewalk or dock; nor are they shorn of those protections when they step from the dock into their boat. The Fourth and Fourteenth Amendments to the Federal Constitution and § 12 of Article I of the Florida Constitution are focal points in this case because stopping a vessel and detaining its occupants constitutes a seizure within the meaning of those Amendments even though the purpose of the stop is limited and the resulting detention quite brief. *United States* v. *Brignoni-Ponce*, supra; *United States* v. *Martinez-Fuerte, supra; Delaware* v. *Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 596, Ed.2d. 660 (1979). The essential purpose of the proscriptions in the Federal and State Constitutions is to impose a standard of *"reasonableness"* upon the exercise of discretion by government officials, including law enforcement agents such as the Florida Marine Patrol Officers, in order to safeguard the privacy and security of the individuals against arbitrary governmental invasion. *Delaware* v. *Prouse, supra; Marshall* v. *Barlow's Inc.*, 436 U.S. 307 (1978); *Camara* v. *Municipal Court*, 387 U.S. 523 (1967). The reasonableness standard usually requires at a minimum that the facts upon which the intrusion is based be capable of measurement against an objective standard. *Terry* v. *Ohio*, 392 U.S. 116 (1968); *United States* v. *Santana*, 437 U.S. 38 (1976). Safeguards are generally relied upon to assure that the individuals reasonable expectation of privacy is not subject to the discretion of the officials in the field. *Camara* v. *Municipal Court, supra; Marshall* v. *Barlow's, Inc., supra; United States* v. *United States District Court*, 407 U.S. 297. This objective standard must even be applied to warrantless intrusions

on individuals constitutional rights when there is probable cause that a crime is being committed. *United States* v. *Santana, supra; United States* v. *Watson*, 423 U.S. 411 (1976); *Kerr* v. *California*, 374 U.S. 23 (1963); *United States* v. *Artiz*, 422 U.S. 89 (1975); *Gerstein* v. *Pugh*, 420 U.S. 103 (1975). In the case at bar there was no probable cause that a crime had been or was being committed. There wasn't even a suspicion that the Defendants were engaged in any form of criminal activity. The officers were on a proverbial fishing expedition hoping to find a lobster thief and those officers used as a pretext to justify stopping the San Raffael at night miles out at sea in a remote area of the ocean which was at the time rough, that they wished to examine the registration papers. It was a classic euphemistic "routine" check. The stopping and detention was wholly capricious. Assuming the San Raffael was required by Florida law to be registered, and there is no indication in the record to indicate that it was, it would be a misdemeanor of the second degree for the registration papers not to be on board. A regulatory inspection for such papers unaccompanied by any articulable suspicion of wrong doing, must be undertaken pursuant to previously specified "neutral criteria." *Marshall* v. *Barlow's Inc., supra.* The record in this case does not reveal that the officers of the Florida Marine Patrol were ever given a standard on which to base their decision to stop and board a vessel. Nevertheless, without statutory authority and without any standard to guide them, the Marine Patrol Officers stopped the San Raffael. The governmental intrusion causes the private interest to suffer even though the governments motivation in honorable. In this case they were hoping to find a lobster thief and if they saw a vessel that was not violating the law in any way and which was not involved in any suspicious activity, they intended to stop the vessel anyway and use as a

pretext for the stop that they were investigating to determine if the vessel needed registration papers and if so if the registration papers were aboard. This pretext investigation was being conducted even though they had no reason to believe that the boat was required to be numbered, and if it was required to be numbered, that the papers were not aboard.

The stopping of the San Raffael constituted a de facto and de jure arrest of its occupants and a seizure of the vessel.

The Supreme Court of the United States in the case of *Delaware* v. *Prouse* considered this point of law. It is a current and in depth analysis of the application of the Fourth Amendment of the United States Constitution to random stops of citizens by police officers. The principals set forth in this decision as well as the follow-up decision by the Supreme Court of United States in *Brown* v. *Texas*, 443 U.S. 47 (1979) have application to the case at bar. Since the decision by the Supreme Court of the United States in Prouse, the Ninth Circuit Court of Appeal has been confronted with two separate cases involving document and safety inspections of vessels by the Coast Guard. It should be noted in analyzing the case at bar with these two cases that the Coast Guard has statutory authority permitting them to board vessels for document and safety inspections. In the case at bar there was no statutory authority. The first case before the Ninth Circuit was *United States* v. *Piner*, 608 F.2nd 358 (1979). The Court on page 361 of its opinion stated as follows:

> "And we believe that under Prouse it is the weight of this subjective intrusion that must be balanced against the governmental need. If the stop of an automobile upon a public highway by an identifiable

police car is felt to create such subjective intrusion as to require the use of potentially less intrusive alternatives, surely the stop of an isolated boat after dark, followed by a physical intrusion upon the boat itself, would have an unsettling effect immeasurably greater, placing a far greater demand upon the government to come forward with balancing factors.

If the purpose of the random stop is to ascertain and discourage noncompliance with safety regulations, we see no reason why this purpose cannot sufficiently be accomplished during the daylight hours. Thus reliance on this less intrusive means eliminates the need for stops and boardings after dark where no cause to suspect noncompliance exists."

Thereafter the Ninth Circuit in *United States* v. *Watson*, 678 F.2nd 765 (1982) held that the facts of that case warranted a conclusion that the documentation inspection stop of the vessel on the high seas in that case did not violate the Fourth Amendment. The Court in distinguishing the Watson case from the Piner case stated on page 767 of the opinion the following:

"Piner involved a random stop of a 43 ft. sailboat during a routine Coast Guard patrol of San Francisco Bay. As here the commander acted without a warrant and without probable cause to believe or a founded suspicion that a violation of the law had occurred. Also as in this case, the stop occurred after dark, at approximately 6:30 p.m. But unlike this case, the decision to board in Piner was made solely by the commander aboard the Coast Guard cutter, was not pursuant to an administrative plan, and was for the sole purpose of inspecting for compliance with safety regulations."

The Court made further comparisons on page 768 of its opinion. It stated as follows:

"Comparing the facts here with those of Piner, particularly in light of the analysis set forth in Prouse,

> we find that Piner does not help us determine whether the stop of the Globe Trotter was reasonable under the Fourth Amendment. The overall intrusion was less here than in Piner, and the government interests were greater. On the intrusion side of the balance, the objective intrusion here was essentially the same as that in Piner, but the subjective intrusion was less. The Coast Guard took several specific steps to minimize concern or fright on the part of the Globe Trotter crew. The stripe-lights were energized early, so that defendants would have less reason to be fearful. Radio contact was made almost a half-hour before boarding. The defendants could not have had any sense of being singled out arbitrarily, as would the occupants of a car plucked from a stream of traffic. Unlike the stops in Piner and Prouse, this stop was not made on a random basis at the discretion of an officer in the field; rather, Commander Chapman was acting according to an administrative plan directing him to stop all vessels less than 200 ft. in length."

In the case at bar there was no administrative plan directing the Marine Patrol Officers to stop the vessels in the area. This was purely a random stop with the police officers having no reason to believe that the occupants of the vessel were involved in any form of illegal activity. In addition thereto the stop occurred in the middle of the night on the high seas without prior announcement or warning by the Marine Patrol Officers under circumstances that could not be more intrusive. The officers surreptitiously approached the Defendants' vessel and when close upon it turned on a flood light illuminating the Defendants' vessel. The object of the Marine Patrol Officers was to surprise the Defendants and catch them off-foot. In contrast, the Coast Guard in the Watson case exercised care and concern for the citizenry in their expectation of privacy by attempting not to frighten the

crew of the vessel they intended to board. The State's interests in determining whether or not a vessel in Florida waters is required to be registered and if so whether or not that vessel has its registration papers on board must be weighed in the balance against this type of intrusion. Not only is a confrontation by force rendered likely by this mode of boarding, the citizens are also being unreasonably subjected to having their motorboats and sailboats damaged and their persons subjected to the risks of injury. It is neither the time nor the place for the Marine Patrol to check boat papers. The job could just as easily be done under less intrusive circumstances and when the risk of harm to property or injury to the persons on board is less.

II.

THE FLORIDA MARINE PATROL WAS PROHIBITED BY STATUTE FROM SEARCHING THE MOTOR VESSEL.

The Defendants were on board a documented vessel. Being documented it was not required by Florida Statutes to be registered with the State of Florida. Florida Statute 371.131 renumbered to 327.15 provided as follows:

> "A boat shall not be required to be numbered under this chapter if it is in one of the following classifications:
>
> (1) Undocumented vessels used exclusively for racing.
>
> (2) Vessels operating under valid temporary certificate of number.
>
> (3) A vessel already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided that such boat shall not have been within this state for a period in excess of 90 consecutive days.

(4) A boat from a country other than the United States temporarily using the waters of this state.

(5) A boat whose owner is the United States.

(6) A ship's lifeboat.

(7) *A boat holding a valid marine document issued by the United States bureau of customs or any agency successor thereto.*

(8) A boat used exclusively on a privately owned lake."

That chapter of Florida law, which also deals with safety equipment, prohibits an officer from boarding a vessel to make a safety inspection without the owner's consent if he is without probable cause or knowledge to believe that a violation of a provision of that chapter has occurred or is occurring. Fla. Statute 371.58 renumbered as 327.56 reads as follows:

"No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard, an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring."

With reference to the conservation laws of the State of Florida, the conservation officers are prohibited from searching a vessel without a search warrant unless they have reason to believe:

a. That the vessel is engaged in transporting fish or fishery products, and

b. They also have reason to believe that the conservation law is being violated.

The appropriate portion of Florida Statute 370.021(5) Powers of Officers reads as follows:

". . . The executive director or any of the conservation officers shall have the authority, without warrant, to board, inspect, and search any boat, fishing appliances, storage or processing plant, fish house, sponge house, oyster house, or any other warehouse, building, or vehicle engaged in transporting any fish or fishery products. *Such authority to search and inspect without a search warrant is limited to those cases in which the executive director or officers have reason to believe that fish or any salt water products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rules promulgated under this law.*"

The Defendants' vessel was traveling in a direction towards the open sea at the time it was stopped by the Florida Marine Patrol. The Marine Patrol Officers admitted that they had no knowledge that this vessel had ever fished in Florida waters or that it had ever sold any fish products in the State of Florida. The informaton that the Florida Marine Patrol did have was that the vessel was on its way to the Bahamas. The activities of the United States Coast Guard in stopping vessels, checking their papers and conducting safety equipment checks thereon is authorized and sanctioned by Federal Statutes. In contrast such activities by the Florida Marine Patrol are prohibited by Florida Statute.

III.

IF THE FLORIDA MARINE PATROL WAS PROHIBITED BY STATUTE FROM SEARCHING THE MOTOR VESSEL, WAS THEIR SEARCH CONSENTED TO AND THEREFOR AUTHORIZED?

The testimony of both the Marine Patrol Officers at both the hearing on the Motion to Suppress as well as the Trial indicates that the officers commanded that the San Raffael be brought to a stop, the officers detained the occupants of the San Raffael for questioning while the

boats were being pounded together by the rough seas, and then Officer Soli asked permission to go aboard and while going aboard was assisted by one of the persons on the San Raffael. (M.5, 9). At this stage it must be shown by clear and convincing evidence that the Defendants freely and voluntarily consented to the boarding of the vessel which was tantamount to the beginning of a warrantless search. In order for a person to be considered to have waived his search and seizure rights, it must clearly appear that he voluntarily permitted or expressly invited and agreed to the search. *Taylor* v. *State*, 355 So.2nd 180 (Fla.3d DCA 1978). In the case at bar the Defendants had already been arrested and their boat seized when Officer Soli elected to assert her presumed authority by going aboard the vessel. The fact that the Defendants were already unlawfully stopped must be taken into account and considered in assessing the totality of the circumstances on the issue of voluntariness. (See Taylor vs State, Supra.). Officer Soli upon boarding the vessel immediately embarked upon a search of the vessel. She was not content with questioning the occupants. She was on board to search the vessel and that was what she did. Although the State would prefer the facts to be that she was involved in a safety check, she admittedly was not. (M.38). She didn't get permission to go into the cabin of the San Raffael and search it, and yet she did. She didn't get permission to search the grocery box. This did not deter her. She searched it anyway. When it came to the fish hold, she asked permission to search it. At this point GARCIA asked if she had a search warrant. She replied she didn't but said she would like to check it anyway. The inquiry about the search warrant continued with GARCIA being adamant that he was not going to permit the search if the officers did not have a search warrant. Officer Walker who was at that time in the Marine Patrol

boat overheard this conversation and retorted that they did not have a search warrant, that they did not need a search warrant, that they were not searching and that GARCIA was under arrest. It was then that GARCIA "consented" to the search of his fish hold where the marijuana was stored.

The central question presented for review in the case of Taylor v. State was whether a free and voluntary consent to a warrantless search of a boat can be obtained by law enforcement officers after such officer has begun an admittedly unlawful search of the boat. The Court in that case found that the consent was coerced. The coercion was found to exist because the police officer had already asserted, by his actions in initiating an unlawful search, that he had the authority to conduct a complete search of the vessel. In the case at bar we have some further elements to show coercion. The Defendants were unlawfully stopped while in the Taylor case the Defendant was lawfully stopped. According to the Prouse case this unlawful stopping amounts to a de jure arrest of the Defendant. In the Taylor case the Defendant did not ask the police officer if he had a search warrant or if a search warrant was necessary. In the case at bar the police officer was asked by the Defendant if he had a search warrant and the police officers misinformed him. (*See Bumper* v. *North Carolina*, 391 US 543 (1968). The police officer said he had a search warrant when he did not).

The Court in Taylor v. State at 183 states as follows:

> "A distinction is recognized in the law between submission to the apparent authority of a law enforcement officer and unqualified consent. Mere acquiescence in a search is not necessarily a waiver of a valid search warrant. Rather for a person to waive his search and seizure rights, it must clearly appear that

> he voluntarily permitted or expressly invited and agreed to the search."

Bailey v. *State*, 319 So. 2nd 222, 27 (Fla. 1975); *Talavera* v. *State*, 186 So. 2nd 811 (Fla.2nd DCA 1966). The fact that the prior illegal search yielded no contraband in no way disipates the illegality of such search nor its obvious course of the effect on the Defendant. Viewing the evidence in this cause in a light most favorable to the State, it must be concluded that Officer Soli conducted an illegal search of the cabin and the bread box on the Defendants' boat which in conjunction with the police officers assertion that a search warrant was not needed and the indication that the search was going to be conducted whether the Defendants liked it or not presumptively tainted and made involuntary the Defendants alleged silent consent to search the boat hold.

Deception can take many forms. Misrepresentation, deceit, fraud, ruse, trickery and guile are but a few. The legal and vernacular nuances in meaning between these terms disappear when they are used in the context of consent searches. *Radowick* v. *State*, 145 Ga. App. 231, 244 S.E. 2d 346 (Ct.App. 1978); *State* v. *Blackburn*, 6 N.C. App. 510, 170 S.E. 2d 50, (Ct. App. 1968) In the case at bar the Marine Patrol Officers through their assertive conduct communicated false and misleading information as to their authority to stop the San Raffael, detain its occupants, board the vessel and thereupon to search that vessel. This assertion of authority not only intimidated and browbeat the Defendants into acquiescing to the search, it also tricked them into believing that the police officers were authorized to do what they were doing. The crescendo of the misrepresentation occurred when GARCIA refused to permit Officer Soli to continue with her unlawful warrantless search. At that point Officer Walker announced that he didn't have a search warrant and

that he didn't need a search warrant to search the vessel. This final misrepresentation, being an intentional and direct verbal misrepresentation, is a more easily recognizable type of deception and is well developed from a decisional standpoint. *Commonwealth* v. *Wright*, 411 Pa. 81, 190 A. 2d 709 (1963); *United States* v. *Reckis*, 119 F. Supp. 687 (D. Mass. 1954) This false and forceful assertion of authority when combined with the preceding invasion of privacy and trample of rights, coerced and compelled the Defendants to permit the further search of their vessel. Such deception and resulting coercion can indeed have no other affect upon the forced consent to the search than to vitiate it. *Bumper* v. *State of North Carolina*, 391 U.S. 542 (1968); *Villari* v. *State*, 372 So.2d 522 (Fla. 1st DCA 1979).

The forceful assertion of nonexistent authority to search the motor vessel without a search warrant bore fruit for the State. The Defendants acquiesced to the demands of the Marine Patrol Officers to search the forward hold and they admitted that marijuana was located therein. The Marine Patrol Officers upon discovering this and hearing this admission attempted to improve the position of the State by reading to the Defendants their *Miranda* rights. The admissions by both GARCIA and CASAL were all part of one continuous process commencing with the unlawful stopping of the vessel, continuing during the unlawful search and the misrepresentation by the Marine Patrol Officer that a search warrant was not necessary for them to enter the forward hold. The fact that the *Miranda* rights were read to the Defendants did not negate the wrongdoing that had already been committed by the arresting officers, nor did it remove the taint from the admissions of the Defendants. The Court in *Taylor* v. *State, Supra,* stated as follows:

> "The only exception recognized by the cases in which a prior illegal arrest or search would not render a subsequent consent, confession or admission involuntary is where there has been a clear and unequivocal break in the chain of illegalities sufficient to dissipate the taint of the prior illegal action. These would certainly be rare cases as our Supreme Court has noted. Bailey v. State, 319 So. 2nd 22 (Fla. 1975)."

In that the search of the vessel was unlawful and the continued attempted search was likewise unlawful, the State in its Brief on page 26 argues that the Marine Patrol was not searching the vessel. Saying they weren't does not distract from the fact that they were searching the vessel and the contraband seized and statement against interest obtained was as a direct result of the illegal search.

IV.

EVEN THOUGH THE SEARCH OF THE HOLD WAS PROHIBITED BY STATUTE, WAS THE SEARCH BY THE FLORIDA MARINE PATROL NONETHELESS MADE VALID AS BEING:

A. INCIDENT TO THE ARREST, OR
B. A CARROLL EXCEPTION, OR
C. AN APPROPRIATE INSPECTION FOR SAFETY REASONS?

This inquiry is being made because it is contended by the State in its Brief that the search by the Florida Marine Patrol was valid because of one or more of the above stated exceptions. In order to determine whether or not any of the exceptions are appropriate to be applied in the case at bar, the facts of the case at bar must first be ascertained. Those essential facts for purposes of this inquiry are as follows:

A. A documented vessel while traveling in Florida waters at night not involved in any apparent criminal or suspicious activity was stopped by the Florida Marine Patrol. The purpose of the stop was to check its papers.

B. Documentation papers were produced.

C. Although the Marine Patrol Officers were prohibited by Florida Statute from searching the boat, they nonetheless embarked upon a search.

D. When the Marine Patrol Officer attempted to search the forward hold she was stopped by GARCIA and questioned repeatedly as to whether or not she had a search warrant. She said, "I'd like to check your forward hold." GARCIA asked her if she had a search warrant and she responded "no I don't have any search warrant, but I would like to see what you have, you know, what seafood products you have. I'd like to check your forward catch box." He kept asking Officer Soli if she had a search warrant and Officer Soli kept answering his question in the same way. GARCIA refused to permit the continued search without a search warrant and thereupon hearing this the other Marine Patrol Officer announced that they did not have a search warrant, that they did not need a search warrant, that they were not searching the boat and that GARCIA was under arrest for failure to have registration papers aboard. (T. 33)

E. GARCIA then consented to the search and admitted that the forward hold contained marijuana.

F. The *Miranda* rights were read to GARCIA and thereafter to CASAL.

With reference to the State's contention that the search was incident to the arrest, it is suggested that the reverse was true unless it could be said that the Defendants were arrested under the Prouse doctrine when the Marine

Patrol Officers stopped the Defendants' vessel. The stopping of the Defendants' vessel was unlawful. The searching of the Defendants' vessel was prohibited by statute and unlawful. The representation by the Marine Patrol Officer that a search warrant was not necessary in order to search the forward hold was a falsehood. The arrest of GARCIA for not having registration papers on board a documented vessel constituted a false arrest, and although said arrest was not followed up by the State with further criminal proceedings, the onslaught of strong-armed, prohibited and deceptive conduct by the Marine Patrol Officers produced incriminating evidence in the form of contraband and admissions. Because of this I do not feel it necessary to pursue the inquiry of whether or not this search would fall within the exception as being incident to a lawful arrest. For purposes of the inquiry it must be assumed that the stopping was lawful, the arrest was lawful and the search followed the arrest. None of these elements are present in this case.

An analysis of the cases cited by the State as well as other Federal and State decisions in point indicate that the vectors controlling the movement of the Court are:

A. That there be a lawful arrest, and

B. That the search be limited to an area into which the arrestee might reach in order to grab a weapon or evidentiary item.

The San Raffael was a 45 to a 49 ft. fishing vessel with a wheelhouse separating the aft cockpit from the forward hold where the marijuana was stored. Covering the forward hold was a heavy hatch which required two men to lift. On top of this hatch was located fishing traps which would first have to be removed in order for entry to be had into the hold. The arrest did not occur in the hold. It

occurred in the cockpit of the fishing vessel at the stern of the boat. If a search were to be considered as incidental to the arrest, the appropriate area for such a search would probably be in the cockpit of the vessel, but surely not in the forward hold. The Chimel case and the Belton case cited by the State are authority for the proposition that a warrantless search by the arresting officers in the case at bar was unlawful because it could not be considered as incident to the arrest. The State also cited *U.S.* v. *Martinez-Fuerte*, 428 U.S. 543 (1976). This case concerned itself with the legality of a search by border patrol agents which search was conducted at a permanent checkpoint and pursuant to statutory authority. In the case at bar no statutory authority existed for the Marine Patrol Officers to search the vessel. In contrast there was a statutory prohibition against such a search. The Martinez-Fuerte case is therefor inappropriate to this consideration.

The State in advancing the argument of the Carroll Exception assumes that probably cause existed. In so doing it ignores the fact that both the Third District Court of Appeal and the Supreme Court of the State of Florida found that probable cause did not exist. The facts of the case, summarized in the opinion of the Supreme Court of the State of Florida and adopted by the State in its Petition for Writ of Certiorari, revealed that the Marine Patrol Officers embarked upon a search of the Respondents' fishing vessel the moment they got on board. They had no suspicion of any kind while they were conducting their search that the Respondents were involved in any form of criminal activity. The Respondents initially did not resist the search, but when the Marine Patrol Officer attempted to search the forward hold where the contraband was, the Respondents resisted the Marine Patrol Officers and told them that they would not permit the

search in absence of a search warrant. It was only after the Police Officers misrepresented their authority by telling the Respondents that they did not need a search warrant to search the forward hold, that the Respondents acquiesced to the Police Officers misrepresented authority to search and admitted to the presence of contraband in the forward hold. The *Carroll* v. *U.S.*, 267 U.S. 132 (1925), *Chambers* v. *Maroni*, 399 U.S. 42 (1970) and *U.S.* v. *Ross*, ____ U.S. ____, 31 Cr. L.3051 (1982) cited by the State in its Brief are inappropriate to the case at bar because there was probable cause in the cases cited to justify the warrantless search whereas in the case at bar there was not. In the case at bar the Marine Patrol Officers stopped the vessel without any probable cause or suspicion to believe that there was any criminal activity involved in by the persons on board and they thereafter conducted their search without any probable cause and contrary to a statutory prohibition. The fruits of their unlawful stopping, unlawful and prohibited search, misrepresented authority to search without a search warrant and the unlawful arrest eventually produced incriminating evidence which was rejected by the Third District Court of Appeal and the Supreme Court of the State of Florida. Article I § 12 of the Florida Constitution states that articles or information obtained as a result of an unreasonable search or seizure shall not be admissible in evidence. The State now asks the Supreme Court to accept in evidence the marijuana and the admissions, the products of the unlawful and prohibited search and unlawful arrests.

In order for the State to advance the administrative inspection theory, it assumes that the stop of the vessel and the search that followed was for the purpose of checking the fishing permits and the safety equipment. The statement of facts contained in the State's Brief does not

say this. The reason it does not is because the vessel was not stopped nor was it searched for those reasons. (M.37-39). Assuming for argument sake that the Marine Patrol Officer was conducting a safety inspection when she was searching the vessel, it must be recognized that the Florida Legislature has by statute prohibited a Florida Marine Patrol Officer from boarding or searching a vessel unless he has the consent of the owner or operator or probable cause or knowledge to believe that a violation of the safety law has occurred.[1] Florida Statute 371.58 renders inappropriate the cases cited by the State in its Brief. *Camara* v. *Municipal Court*, 387 U.S. 523 (1967) concerns itself with a San Francisco housing code which attempted to authorize building inspectors to inspect residences without a warrant. The defendant brought an action for a Writ of Prohibition claiming that the ordinances authorizing such inspections was unconstitutional. The Supreme Court of the United States in its Opinion stated in part:

> "In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interest protected by the 4th Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the 4th Amendment guarantees to the individual, and that the reasons put forth in Frank v. Maryland and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the 4th Amendment's protections."

The Camara case stands for the proposition that if the Florida Marine Patrol wished to conduct an administrative search of the type that was done here, it would need a

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[1] Florida Statute 371.58 Safety inspections; qualified.

search warrant and this would only be issued if there was probable cause. It again must be pointed out in order to avoid the possibility of confusion that the Marine Patrol Officers were not conducting a safety inspection so this inquiry by the State has no application to the case at bar.

In the case of *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978) a business man refused to permit an inspector from the Occupation Safety and Health Administration to conduct a warrantless search of his business premises which warrantless search was apparently authorized by a statute. The Supreme Court ruled that such an inspection could only be made with a search warrant. The Supreme Court stated in part as follows:

> "The authority to make warrantless searches devolves almost unbridled discretion upon executive and administrative officers, particularly those in the field, as to when to search and whom to search. A warrant, by contrast, would provide assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutral criteria. Also a warrant would then and there advise the owner of the scope and objects of the search, beyond which limits the inspector is not expected to proceed. These are important functions for a warrant to perform, functions which underly the Court's prior decisions that the warrant clause applys to inspections for compliance with regulatory statutes. *Camara* v. *Municipal Court*, 387 U.S. 523. We conclude that the concerns expressed by the secretary do not suffice to justify warrantless inspections under O.S.H.A. or vitiate the general constitutional requirement that for a search to be reasonable a warrant must be obtained."

In summary the Camara and Barlow's cases both involved administrative inspections authorized by statute. In the case at bar the search was prohibited by statute.

The Supreme Court of the United States in both of the cases cited held that in order for the inspection to be lawful two things were required:

1. Probable cause must exist that a violation has occurred, and

2. A search warrant must first be obtained by the inspector in order for him to lawfully conduct his inspection.

In the case at bar there was neither probable cause nor a search warrant.

V.

IF THE STATE'S CASE AGAINST THE DEFENDANTS DEPENDED UPON EVIDENCE OBTAINED AS A RESULT OF AN UNLAWFUL SEARCH OR SEIZUIRE, SHOULD THAT INCRIMINATING EVIDENCE HAVE BEEN EXCLUDED BY THE TRIAL COURT?

We are concerned in the case at bar not only with a violation of the Fourth Amendment of the United States Constitution but also a violation of Article I, Section 12, of the Florida Constitution. The framers of the Florida Constitution, desirous of protecting the rights of the citizens from unreasonable searches and seizures by the Government, stated in Article I, § 12 as follows:

> "The right of the people to be secured in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. *Articles or information obtained in violation of this right shall not be admissible in evidence.*"

The Federal Constitution does not have the exclusionary rule built into the Fourth Amendment. If the Federal Court abandons the long established exclusionary rule set forth in *Mapp* v. *Ohio*, supra, we can expect policy decisions in the Federal Courts which undoubtedly will have the effect of undermining the Fourth Amendment rights. That risk does not exist in the Florida Courts due to the fact that the exlusionary rule is not a judicial rule but instead is a constitutional mandate. Justice Hubbart in writing the opinion in *Taylor* v. *State*, 355 So.2nd 180 (F.3rd DCA 1978) concisely compared the Fourth Amendment of the Federal Constitution to Article I § 12 of the Florida Constitution when he stated therein as follows:

> "The law is equally clear as to the evidentiary consequences attendant upon an unreasonable search and seizure under either the Federal or Florida Constitution. Any evidence seized by the law enforcement agents in violation of the Fourth and Fourteenth Amendments to the United States Constitution or in violation of Article I, § 12 of the Florida Constitution is inadmissible in evidence. It is sufficient if either one or both of these constitutional provisions have been violated in order to render the seized evidence inadmissible against the victim of the search in a Florida Court. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); Gildrie v. State, 94 Fla. 134, 113 So. 704 (1927).
>
> (7) Although there has been some suggestion that the Fourth Amendment exclusionary rule should be altered or abolished, Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976) (Burger, C.J. concurring, White, J. dissenting); Bivens v. Six Unknown Narcotics Agents, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) (Burger, C.J. dissenting), the rule of Mapp v. Ohio, supra remains intact. In addition, even if the federal exclusionary rule is changed, this in no way affects the fifty year old rule

> in Florida that evidence seized in violation of Article I, § 12, of the Florida Constitution is inadmissible in evidence. Gildrie v. State, 94 Fla. 134, 113 So.704 (1927). "In Florida the exclusionary rule is not merely a judicial construct but is written into the Constitution itself. 'Articles or information' obtained unreasonably, within the meaning of Art. I, § 12, 'shall not be admissible in evidence.' " Croteau v. State, 334 So.2d 577, 580-581 (Fla. 1976) (Hatchett, J. concurring). As the Supreme Court of Florida in Sing v. Wainright, 148 So.2d 19, 20 (Fla. 1962), has cogently noted: "Mapp v. Ohio, supra, added nothing whatever to the law of Florida. It created no new procedural right so far as the jurisprudence of this State is concerned. This Court long ago concluded that evidence obtained as the product of an unreasonable search is not admissible in a criminal proceeding. Florida has long recognized the so-called 'exclusionary rule' regarding the inadmissibility of such evidence."

It is well established and recognized law in Florida that police officers are not justified in conducting a search merely because they desire to find incriminating evidence. *Carter* v. *State*, 238 So.2nd 681 (1970). The cases are manifold and uniform that probable cause must exist together with exigent circumstances in order to justify a warrantless search. The Court in *Miranda* v. *State*, 354 So.2nd 411 (1978) stated as follows in discussing the authority of the Florida Marine Patrol in searching vessels:

> "Such authority, however, does not carry with it the right to conduct a general exploratory search of the boat or automobile for evidence of crime. In the absence of probable cause or some other recognized exception to the search warrant rule, such warrantless searches are clearly unreasonable."

The Supreme Court of the State of Florida in the case of *Hill* v. *State*, 238 So.2d 608 (1970) established that rule

for the Florida Marine Patrol to follow. The Court in that case states as follows:

> "The permission to board must stop there, however. Any search or inspection of the boat without a search warrant must be accomplished within the frame work of probable cause described in Section 370.021(5) setforth in footnote 7 supra."

The Third District Court of Appeal in *Taylor* v. *State*, supra also pointed out the limitations of the Florida Marine Patrol Officers it stated on page 184 thereof as follows:

> "(8) Turning to the instant case, it is clear that Officer Tucker had the authority to stop the defendant's boat because it was carrying an expired commercial boat registration in violation of Section 371.051(7), Florida Statutes (1975). Such power, however, did not carry with it the automatic authority for Officer Tucker to conduct a general search of defendant's boat. Hill v. State, 238 So.2d 608 (Fla. 1970). Yet that is exactly what Officer Tucker proceeded to accomplish in this case under the guise of consent.
>
> (9) The officer's purpose in boarding the boat, as he testified, was to determine if the boat contained undersized lobsters as previously suspected. Upon boarding, he politely, but firmly proceeded to question the defendant with respect thereto without any mention of the expired boat registration. And while doing so, he looked into the icebox cooler on the deck of the boat searching the cooler for undersized lobsters. Officer Tucker correctly admitted to the court that he exceeded his authority in conducting such a search. Almost immediately thereafter, he pointed to the hold in the boat and asked if he could look therein. The defendant acquiesced by opening the hatch without saying a word. Under these circumstances, it is our view that the defendant's silent consent was tainted by the prior illegal search of the icebox cooler and therefore represents an acquiesc-

ence to authority rather than a free and voluntary consent to search. The defendant testified that he thought that the officer had a right to look in the hold, a not unreasonable belief since the officer had just prior thereto asserted his right to search the cooler without a search warrant and without obtaining the defendant's permission. The fact that the prior illegal search yielded no contraband in no way dissipates the admitted illegality of such search nor its obvious coercive effect on the defendant.

The trial Judge based his ruling in part on the fact that the defendant was friendly to Officer Tucker during the boarding and search of the boat, that the defendant had at least one other campanion on board, and that there were guns stored elsewhere in the boat. These are certainly relevant considerations in examining the issue of voluntariness based on the totality of the circumstances. They are, however, insufficient in our view to break the chain of serious illegality set in motion by the officer's admitted prior illegal search of the icebox cooler. Implicit with that action, Officer Tucker was asserting his right to search hidden areas on the boat without probable cause and without a search warrant, an authority he clearly did not have."

The incriminating contraband and admissions acquired as a result of the unlawful search cannot be admitted into evidence because of Article I, § 12 of the Florida Constitution and should not be admitted into evidence because it was obtained in clear violation of the Fourth Amendment to the United States Constitution.

CONCLUSION

The stopping of the San Raffael was unreasonable as reasoned by the Court in *Delaware* v. *Prouse*. The search that followed was prohibited by *Florida Statute 371.58* which prohibition the State of Florida has recognized in

its Court decisions. *Taylor* v. *State*, 355 So.2nd 180 (1978); *Tingley* v. *Brown*, 380 So.2nd 1289 (Fla. 1980). The Defendants did not consent to the search of their vessel as was clearly indicated when they asked Officer Soli if she had a search warrant. *Villari* v. *State*, 372 So.2nd 522 (1979). The defendants subsequent opening of the forward hatch did not constitute consent since they were mislead by the Marine Patrol Officer to believe that such a search warrant was not needed for the search. *Taylor* v. *State*, 355 So.2nd 180 (Fla. 1978); *Bumper* v. *North Carolina*, 391 U.S. 543 (1968). The assertion by the Marine Patrol Officer that they were under arrest for not having registration papers, when none were necessary, was a coercive effort to gain entrance into the forward hold. Without any break in the casual connection between the illegal stopping of the vessel, the illegal search of the vessel and the illegal arrest of the Defendants, statements were made by the Defendants which were incriminating. These statements together with the contraband should be suppressed and not admitted into evidence. *Article I § 12 of the Florida Constitution; Miranda* v. *Arizona*, 384 U.S. 436; *Brown* v. *Illinois*, 422 U.S. 590; *Dunaway* v. *New York*, 442 U.S. 200.

The Supreme Court of Florida in deciding that the search of the San Raffael was unreasonable in that it was not based on probable cause approved the Third District Court's reversal of the conviction. The Supreme Court of Florida in examining the questions with reference to the search applied Florida cases and a Florida Statute. While dual grounds for its decision in this regard undoubtedly existed, a somewhat unique legal proposition is presented in that Article I, § 12 of the Florida Constitution is broader in its scope in providing personal rights than the

Fourth Amendment to the Federal Constitution. Regardless of which Constitution is relied upon, the Judgement of the Supreme Court of Florida was correct.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-2318

STATE OF FLORIDA,

Petitioner,

vs.

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

REPLY BRIEF OF PETITIONER

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SUMMARY

The warrantless search of the San Rafael was justified under at least three exceptions to the Fourth Amendment warrant requirement. The search was incident to a lawful arrest, New York v. Belton, 453 U.S. 454 (1981); a "Carroll" exception United States v. Ross, ___ U.S.___, 72 L.Ed.2d 572 (1982); and constituted a valid "inspection", United States v. Martinez-Fuerte, 428 U.S. 543 (1976) and Delaware v. Prouse, 440 U.S. 648 (1979).

A. Search Incident To Arrest

Respondents have avoided Petitioner's argument, misapprehended the issue, and misconstrued the facts. Without

discussing the applicability of New York v. Belton, supra, they have blindly argued that "... the Martinez-Fuerte case is therefor inappropriate to this consideration," and reason that ". . . if a search were to be considered as incidental to the arrest, the appropriate area for such a search would probably be in the cockpit of the vessel, but surely not in the forward hold." (Brief of Respondents p. 29).

The facts as set forth by the Florida Supreme Court in State v. Casal, 410 So.2d 153 (Fla. 1982) are the historical facts. (They are not in harmony with Respondents' skewed version.) The Court found that once given leave to board the San Rafael, Officer Soli accompanied by Respondents went to the cabin to look for registration papers.

She asked to look in the icebox as part of her inspection and was told that would be fine. Based on what she saw in the icebox and prior statements made by Respondents, she then sought permission to look into the forward hold. Captain Garcia asked whether she had a search warrant and Officer Walker said they did not need one since they were not conducting a search. Respondents were then placed under arrest for failure to have registration papers on board and at that point Garcia spontaneously said "there was no need to go further and that the boat was loaded with grass." State v. Casal, 410 So.2d at 153. Miranda warning were read and Garcia then confirmed that marijuana was on board. He then assisted Officer Soli in opening the forward hatch where several bales of marijuana were found.

In Belton, 453 U.S. at 460 the "workable rule" announced validated the scope of the search sub judice. Since the propriety of Respondents' arrests was never specifically questioned, the search of the hold immediately following the custodial arrest was justified. Michigan v. DeFillippo, 443 U.S. 31 (1979); Chimel v. California, 395 U.S. 752 (1969).

B. "Carroll Exception"

Respondents dispute the applicability of this Court's decision in Carroll v. United States, 267 U.S. 132 (1925) arguing that no probable cause existed to justify the warrantless search. Respondents contend without discussing the impact of United States v. Ross, supra, that the facts leading up to

and including Garcia's statements against penal interest were insufficient to establish the requisite probable cause.

Respondents seemingly contend that since no probable cause existed at the time of the initial stop, no probable cause could have developed regardless of what occurred aboard the San Rafael.

Once on board, Garcia's volunteered statements against penal interest provided the requisite probable cause to search as surely as the strong aroma of marijuana or marijuana in plain view. United States v. Clark, 664 F.2d 1174 (11th Cir. 1981); Texas v. White, 423 U.S. 67 (1975); Michigan v. Thomas, __ U.S.____, 102 S.Ct. 2079 (1982).

C. Inspection "Search"

Respondents argue that the "search" can not be justified as an administrative inspection because Camara v. Municipal Court, 387 U.S. 523 (1967) and Marshall v. Barlow's Inc., 436 U.S. 307 (1978) "both involved administrative inspections authorized by statute. In the case at bar the search was prohibited by statute." (Respondent's Brief p. 32) Respondents are incorrect.

Section 371.58 Fla.Stat. (1977) authorizes safety inspections for all boats "when the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occurred or

is occurring." Section 371.041 Fla. Stat. (1977) requires all motorboats to be registered and Section 371.051(5) Fla. Stat. (1977) requires such registration to be aboard and available. Section 371.65(5) Fla.Stat. (1977) impose a misdemeanor penalty for not having a current registration.

Officer Soli and Officer Walker, Marine Patrol officers, had the right to inspect the San Rafael, first, because permission was granted to board and second, because Respondents could not produce registration papers, a clear violation of Section 371.051(5) Fla.Stat. (1977).

Respondents completely ignore this Court's decision in Donovan v. Dewey, 452

U.S. 594 (1981) which balanced the protected Fourth Amendment rights of a proprietor of commercial property against the government's need to develop "legislative schemes authorizing warrantless administrative searches of commercial property. . ." 452 U.S. at 598.

Where, as here, the need is paramount to protect the boating and fishing industries of Florida, the legislative scheme authorizing warrantless administration searches pursuant to Section 371.058 Fla.Stat. (1977) does not impermissibly infringe on Respondents' Fourth Amendment rights. See United States v. Raub, 637 F.2d 1205 (9th Cir. 1980); United States v. Watson, 678 F.2d 765 (9th Cir. 1982); United States v.

Hilton, 619 F.2d 127 (1st Cir. 1980); United States v. DeWeese, 632 F.2d 1267 (5th Cir. 1980); United States v. Clark, supra. 664 F.2d at 1175; United States v. Freeman, 660 F.2d 1030 (5th Cir. 1981); United States v. Goldfine, 538 F.2d 815 (9th Cir. 1976); United States v. Prendergast, 585 F.2d 69 (3d Cir. 1978); United States v. Arra, 630 F.2d 836 (1st Cir. 1980); United States v. Hayes, 653 F.2d 8 (1st Cir. 1981); United States v. Demanett, 629 F.2d 862 (3d Cir. 1980), cert. den. 450 U.S. 910 (1981); and Scott v. United States, 436 U.S. 128 (1978).

D. Other Issues

Respondents contrary to Rule 19.5, Rules of the Court, have argued alternative claims without filing the requisite

cross-petition. Respondents advance a reply to the validity of the warrantless search in Argument IV of their brief. The others, Arguments I through III, and Argument V. either are not properly before the Court or fail to state a cognizable claim which is "of sufficient general importance to justify the granting of review." [1]

1. The record is void of any evidence that Respondents filed a cross-petition challenging the validity of the initial stop of the San Rafael. The Florida Supreme Court in State v. Casal, 410 So.2d 152 (Fla. 1982) specifically found the initial stop to be valid. Pursuant to United States v. Raines, 362 U.S. 17, 27 n. 7 (1960); Mills v. Electric Auto Lite Co., 396 U.S. 375, 381 n. 4 (1970); Federal Energy Comm. v. Algonquin S.N.G. Inc, 426 U.S. 548, 560 n. 11 (1976), Respondents were required to file a timely cross-petition challenging the propriety of the initial stop and satisfy all requirements respecting an appeal as to the portion of the decision rendered adverse to them.

See United States v. Raines, 362 U.S. 17, 27 n. 7 (1960); Mills v. Electric Auto Lite Co. 396 U.S. 375, 381 n. 4 (1970); Federal Energy Comm. v. Algonquin S.N.G., Inc., 426 U.S. 548, 560 n. 11 (1976) and R. Stern and E. Gressman, Supreme Court Practice, 447-487 (5th ed. 1978).

Only a cursory analysis of Respondents' arguments has been undertaken. Argument in response to Respondents' Arguments I through III and Argument V

Moreover, certain arguments presented suffer vitality in that they are being argued for the first time, Cardinale v. Louisiana, 394 U.S. 437 (1969); or are barred pursuant to Wainwright v. Stone, 414 U.S. 21 (1973).

is made only assuming arguendo that this Court preliminarily review same despite their infirmities.

I. The Florida Marine Patrol's Initial Stop Of the San Rafael Was Valid.

Citing to Delaware v. Prouse, supra, and United States v. Piner, 608 F.2d 358 (9th Cir. 1979) Respondents take issue with the Florida Supreme Court's holding in State v. Casal, supra at 410 So.2d 155, that the initial stop was not an impermissible intrusion of their Fourth Amendment rights. The Court held:

> ". . .the state's interest in random stopping and brief detention of motorboats for the limited purpose of checking fishing permits, registration certificate and safety equipment outweighs a person's

> interest in being complete ly free from such limited intrusion. In light of the absence of less restrictive alternatives which would accomplish the state's goals, spot checks of motorboats are not unreasonable under the Fourth Amendment. The district court erred in holding that State Marine officers must have proba- ble cause to stop a vessel for the limited purposes discussed above."
> 410 So.2d at 155

The Court recognized that this Court in Delaware v. Prouse, supra did not preclude development of a spot check system and further observed that "the Court went so far as to suggest the possibility of setting up roadblocks where all traffic is stopped." 410 So.2d 155. See also United States v. Martinez-Fuerte, supra.

In United States v. Watson, supra, distinguishing United States v. Piner, supra, (relied upon by Respondents), the Ninth Circuit Court noted:

> "The intrusion must be measured in terms of both "'[the] objective intrusion--the stop itself, the questioning, and the visual inspection--. . . [and] the subjective intrusion--the generating of concern or even fright on the part of lawful travelers--. . .'" Prouse, 440 U.S. at 656,. . . . The governmental interest, on the other hand, must be evaluated in light of "alternative mechanisms available, both those in use and those that might be adopted, "to accomplish the legitimate government objectives. Prouse, 440 U.S. at 659, 99 S.Ct. at 1399."
>
> 678 F.2d at 767-768.

In setting forth this balancing test the Court rejected its previous decision in Piner, finding that in Watson a similarly circumstanced case, the intrusion was minimal and the government's interest great.[2]

Respondents' argument that the Marine Patrol officers had no authority to stop the San Rafael is ill-conceived. The facts reject Respondents' contention that there was no "articulable and reasonable evidence of registration and only

[2] While the initial stop is not properly before the Court, it should be noted that this issue is before the Court in United States v. Villamonte-Marquez, Case No. 81-1350 set for oral argument February 23, 1983. The question presented concerns the validity, under the Fourth Amendment, of Customs' statutorily authorized practice of boarding vessels on inland waters, in the absence a reasonable suspicion of a violation of law, to check the vessel's documentation.

suspicion that the vessel" was "not registered." (Respondents Brief p. 13). Indeed, Respondents could not produce any evidence of registration and only tendered tax receipts and other unidentified "documentation". The Ninth Circuit in Watson, supra, in response to a similar contention held:

> "Defendants have not shown any feasible, less intrusive means for policing compliance with safety and documentations regulations. A requirement that the Coast Guard have a founded suspicion of non-compliance before boarding would completely frustrate Coast Guard efforts to enforce compliance, simply because most documentation and safety violations cannot be detected without boarding. . . ."
>
> 678 F.2d at 772.

The Court concluded that "the modest Fourth Amendment interests implicated by the stop and boarding in this case are outweighed by the government's strong interests in securing compliance with document and safety regulations." 678 F.2d at 773.[3]

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[3]Likewise the Court in United States v. Watson, supra found a pretext argument to be wanting. Citing to a host of cases the Court held:

> ". . . We assume that the administrative plan which led to the stop of the GLOBE TROTTER was motivated partly by suspicion of drug smuggling.
>
> However, the stop and search had an independent administrative justification, and did not exceed in scope what was permissible under that administrative justification. Therefore, we need not consider any criminal enforcement interest the Coast Guard may have had." 678 F.2d at 771.

II. The Florida Marine Patrol Was Prohibited By Statute From Searching The San Rafael.

Respondents for the first time argue that the San Rafael was a "documented vessel" and therefore not subject to registration pursuant to Section 371.131, Fla.Stat. (1977).

This argument is totally barred from consideration in that 1) the validity of the stop is not before the court and 2) this argument has never been tendered prior to said brief. Pursuant to Cardinale v. Louisiana, 394 U.S. 437 (1969), Respondents are barred from relying on same.[4]

[4]Moreover, the record does not support Respondents contention that the San Rafael had a valid marine document issued by the United States Bureau of Customs. The only references to document paper was

Respondents assert that the State's statutes do not authorize and sanction safety equipment checks is totally erroneous. See Section 371.58, Fla.Stat. (1977). Wainwright v. Stone, 414 U.S. 21 (1973).

III. Whether There Was Consent To Search

Although the Florida Supreme Court in State v. Casal, supra concluded ". . . consent was freely given to board the

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made by the Marine officers who testified that in response to a request for registration papers, Respondents tendered tax receipt and "documentation paper for the vessel" which did not have either Respondents' name on them. (A-15-16, 55). Even assuming documentation paper were presented, a valid marine documentation does not vitiate the State's right to require safety equipment or compliance with the State's fishing and boating regulations.

vessel and to look in the icebox. . ." 410 So.2d at 156, it reversed because no consent was obtained to search the entire vessel and there was insufficient probable cause to justify said search.

It is unclear how the majority reached the finding that the evidence was insufficient to support probable cause. The dissent however, speaking through Justice Alderman correctly reasoned that the facts squarely placed this case either under the Carroll exception, or a search incident to a lawful arrest.

Respondents submit nothing in their arguments which refute the position tender in Petitioner's Brief on the

Merits that the search was valid under the aforenoted exceptions. In fact Respondents fail to specifically discuss any of the authorities which support Petitioner's justification for the search.

IV. Whether The Illegally Seized Evidence Could Have Been Admitted At Trial?

Respondents lastly assert that not only does the case concern a violation of the Fourth Amendment, "but also a violation of Article I, Section 12, of the Florida Constitution." (Respondents' Brief p. 33) Wainwright v. Stone, supra, controls adversely to Respondents' position.

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5. Petitioner has renumbered Respondents' Argument V to IV since Argument IV was initially discussed pp. 1-9.

CONCLUSION

The Florida Supreme Court's opinion in State v. Casal, supra failed to apply controlling decisions of this Court in its review of the warrantless search of the San Rafael. The search was valid as a search incident to a lawful arrest, probable cause existed under the Carroll exception and Officers Soli and Walker were authorized to conduct a safety inspection and registration check of said vessel. Based on the pleading, Petitioner would urge this Court to reverse the decision rendered in State v. Casal, supra.

Respectfully submitted,

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NO. 81-2318-CSY	TITLE Florida, Petitioner v. Constantino CASAL and Omar GARCIA

DOCKETED	COURT
June 17, 1982	Supreme Court of Florida

DATE	PROCEEDINGS AND ORDERS
	Counsel for Petitioner: Anthony C. Musto
	Counsel for Respondents:
May 19, 1982	Order extending time to file petition for certiorari until June 13, 1982 by Powell, J.
June 17, 1982	Petition for writ of certiorari filed.
July 20, 1982	Motion of respondents for leave to proceed in forma pauperis and brief in opposition filed.
July 21, 1982	DISTRIBUTED. SL11P3.
Oct. 4, 1982	The motion of respondents for leave to proceed in forma pauperis is GRANTED. Petition GRANTED.

Nov. 22, 1982	Brief for the petitioner filed. (ALSO APPENDIX FILED).
Dec. 28, 1982	Brief of respondents filed.
Jan. 14, 1983	CIRCULATED.
Feb. 14, 1983	Reply brief of petitioner filed. (D).
Feb. 23, 1983	ARGUED.